LIBRARY
SUPREME COURT, U.S.

72 - 1680

Supreme Court, U. S.
FILED
JUN 13 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. A-1009

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,
Petitioners,

v.

DONALD T. DORSEY, COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE STATE OF CONNECTICUT; ROBERT I. BERDON, TREASURER OF THE STATE OF CONNECTICUT; ADOLF G. CARLSON, COMMISSIONER OF FINANCE AND CONTROL OF THE STATE OF CONNECTICUT; NATHAN G. AGOSTINELLI, COMPTROLLER OF THE STATE OF CONNECTICUT; and BARTHOLOMEW GUIDA, MAYOR OF THE CITY OF NEW HAVEN,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

DONALD E. COBEY
CHARLES W. DIBBELL
RONALD J. FRACASSE
205 Church Street
New Haven, Connecticut 06506
Counsel for Petitioners

June 11, 1973

INDEX

	PAGE
Opinions below	2
Jurisdiction	2
Questions presented	2
Constitutional and statutory provisions involved	3
Statement of the case	8
The Federal questions sought to be reviewed were raised in each proceeding below and decided adversely to petitioners	13
Reasons for granting the writ	19
I. This is the First Case in this Court Involving Eligibility of a Tenant to Hold the Office of Housing Authority Commissioner	19
II. A Ruling by this Court as to the Federal Mandate Stated in 42 U.S.C. §1401 is Necessary	22
III. This Court Should Decide Whether There Shall be a Uniform Standard of Eligibility of Tenants to be Commissioners of Federally Subsidized Housing Authorities Under 42 U.S.C. §1401, or Whether Varying Standards May be Prescribed by the States	24
IV. Denial of the Petition Will Open the Way to Compelling Surrender of Constitutional Rights as Condition of Receiving Benefits of United States Housing Act of 1937	26

PAGE

Conclusion 28

Appendices

Appendix A—Judgment and opinion of Connecticut Supreme Court 1a

Appendix B—Judgment and opinion of Connecticut Superior Court 1b

Appendix C—Letter dated May 23, 1973 of National Association of Housing and Redevelopment Officials 1c

Appendix D—Excerpts from PRINTED RECORD in court below (Finding) 1d

Appendix E—Provisions of the Constitution of the United States which the Case Involves 1e

Citations

Cases:

Fegan v. *Lykes Bros.*, 198 La. 312, 3 So. 2d 632 24

Pennsylvania v. *Nelson*, 350 U.S. 497 24

Roe v. *Wade*, — U.S. —, 35 L.Ed. 2d 147 25

Shapiro v. *Thompson*, 394 U.S. 618 16

Thorpe v. *Housing Authority of the City of Durham*, 386 U.S. 670 28

Town of Edgewater v. *Liebhardt*, 32 Cal. 307, 76 P. 2d 366 24

Turner v. *Fouche*, 396 U.S. 346 26

United States v. *Chicago*, M, St. P.&P.R.R., 282 U.S. 311 28

PAGE

Statutes:

Federal:

United States Housing Act of 1937, as amended, (42 U.S.C. §§ 1401 *et. seq.*, ... 3, 9, 10, 22, 26, 27

§ 1401 ..... 2, 3, 9, 12, 22, 23, 24, 25, 26

§ 1402 4

§ 1403 5

§ 1410 5

State:

California—41A Cal. Code, Secs. 34270, 34281 20

Connecticut—Conn. Gen. Stat. Ch. 128, Secs. 8-38 et seq. 9, 10

Sec. 8-41 ..... 6, 9, 20

Sec. 8-42 ..... 3, 7, 11, 12, 16, 18, 20

Sec. 8-56 8

Massachusetts—Ann. Laws of Mass., Ch. 121, Sec. 26L 20

Michigan—Mich. Comp. L. Ann. Sec. 125-654 20

New York—Public Housing Law (44A Consol. Laws) Sec. 30 20

Rhode Island—Gen. L. of R. I. Secs. 45-25-10, 45-25-13 20

Miscellaneous:

	PAGE
State Attorney General Opinions	
California—OAG No. 67-166, April 4, 1968	21
Connecticut—Opinion April 12, 1971	10
Kentucky—OAG No. 70-135, February 24, 1970 (Unpublished)	21
Maine, OAG dated April 25, 1973 (Unpublished)	21
New York—Informal opinion dated May 18, 1967	21
Ohio—OAG No. 71-057, September 22, 1971	21
Ebenstein, *The Law of Public Housing*, 23 Minn. L. Rev. 878 (1939)	20
Reich, *The New Property*, 73 Yale L. J. 733 (1964)	28
Letter May 23, 1973 from National Association and Housing Redevelopment Officials	21
Lawyers' Code of Professional Responsibility, Canon 5	23
Merriam-Webster Dictionary (3d Ed. 1964), p. 2104	23

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. A-1009

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS, *Petitioners,*

v.

DONALD T. DORSEY, COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE STATE OF CONNECTICUT; ROBERT I. BERDON, TREASURER OF THE STATE OF CONNECTICUT; ADOLF G. CARLSON, COMMISSIONER OF FINANCE AND CONTROL OF THE STATE OF CONNECTICUT; NATHAN G. AGOSTINELLI, COMPTROLLER OF THE STATE OF CONNECTICUT; and BARTHOLOMEW GUIDA, MAYOR OF THE CITY OF NEW HAVEN, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

The petitioners, Housing Authority of the City of New Haven, Polly Moorer and Joseph R. Peters, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Connecticut entered in this proceeding on January 18, 1973.

Opinions Below

The opinion of the Connecticut Supreme Court, which is not yet reported in the official Connecticut Reports or in the unofficial Atlantic Reports, appears in Appendix A hereto, *infra*, pp. 2a-8a, as printed in the January 30, 1973 issue of the *Connecticut Law Journal*, 34 Conn. L. J., No. 31, p. 1. The judgment entered by such court also appears in Appendix A, *infra*, pp. 1a-2a. The opinion of the Superior Court of the State of Connecticut, which is unreported, appears in Appendix B hereto, together with the judgment entered by such court, *infra*, pp. 1b-9b.

Jurisdiction

The judgment of the Connecticut Supreme Court was entered on January 18, 1973. An order of Mr. Justice Thurgood Marshall was signed on April 3, 1973 extending the time for filing a petition for writ of certiorari in this matter to and including June 15, 1973.

This Court's jurisdiction is invoked under 28 U. S. C. § 1257(3).

Questions Presented

1. Whether 42 U.S.C. § 1401 mandates that no tenant of a Federally subsidized public housing authority shall be barred, solely because of such tenancy, from serving as a commissioner of the housing authority of which he is a tenant, so that, under the principles of Federal supremacy set forth in Article VI, clause 2 of the United States Constitution, such statute is controlling over any Connecticut statutory or common law to the contrary as determined by the Connecticut Supreme Court.

2. **Whether Section 8-42, Connecticut General Statutes, as it has been construed and applied to tenants of a Connecticut local housing authority by the Connecticut Supreme Court so as to bar a tenant of a Federally subsidized public housing authority from being a commissioner of that authority solely because of such tenancy, is repugnant to the Constitution or laws of the United States.**

3. Whether the judgment of the Connecticut Supreme Court, which bars a tenant of a Federally subsidized public housing authority from being a commissioner of that authority in Connecticut solely because of such tenancy, violates the rights, privileges and immunities of the individual petitioners and of the corporate petitioner under the Equal Protection Clause, the Privileges and Immunities Clause and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States and under the United States Housing Act of 1937, as amended (42 U.S.C. § 1401 *et seq.*).

Constitutional and Statutory Provisions Involved

A. Constitutional provisions:

This petition involves the Fourteenth Amendment to the Constitution of the United States and the Supremacy Clause (Article VI, Clause 2) of the Constitution, which are set out in Appendix E, *infra,* p. 1e.

B. Statutory provisions:

1. United States Code, Title 42:

§ 1401. *Declaration of Policy*

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring

unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe and sanitary dwellings for families of low income, in urban, rural nonfarm, and Indian areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies. *It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project.* [Emphasis added]

§ 1402. *Definitions*

(1) The term "low-rent housing" means decent, safe and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income. . . .

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. . . .

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Authority), which is authorized to engage in the development or administration of low-rent housing or slum clearance. . . .

(13) The term "Authority" means the United States Housing Authority created by section 1403 of this title.

§ 1403. *United States Housing Authority*

There is hereby created in the Department of Housing and Urban Development the United States Housing Authority, which shall be an agency and instrumentality of the United States. The functions, powers, and duties of the Authority are vested in and shall be exercised by the Secretary of Housing and Urban Development. . . .

§ 1410. *Annual contributions in assistance of low rentals—Authorization*

(a) The Authority may make annual contributions to public housing agencies to assist in achieving and maintaining the low-rent character of their housing projects. The annual contributions for any such project shall be fixed in uniform amounts, and shall be paid in such amounts over a fixed period of years. The Authority shall embody the provisions for such annual contributions in a contract guaranteeing their payment over such fixed period: . . . *Provided, further,* That the Authority is authorized to amend or supersede annual contributions contracts to provide payments annually (within the limits prescribed by this chapter) which the Authority determines are required (1) to assure the low-rent character of the projects involved, and (2) to achieve and maintain adequate operating and maintenance services and reserve funds including payment of outstanding debts.

2. Connecticut General Statutes:

§ 8-41. *Appointment, Qualifications and Tenure of Commissioners*

When the governing body of a municipality other than a town adopts a resolution as described in section 8-40, it shall promptly notify the chief executive officer of such adoption. Upon receiving such notice, the chief executive officer shall appoint five persons who are residents of said municipality as commissioners of the authority. If the governing body of a town adopts such a resolution, such body shall appoint five persons who are residents of said town as commissioners of the authority created for such town. The commissioners who are first so appointed shall be designated to serve for one, two, three, four and five years, respectively, from the first day of the month next succeeding the date of their appointment and annually thereafter a commissioner shall be appointed to serve for five years except that any vacancy which may occur because of a change of residence by a commissioner, removal of a commissioner, resignation or death shall be filled for the unexpired portion of the term. No commissioner of an authority may hold any public office in the municipality for which the authority is created. A commissioner shall hold office until his successor is appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk and shall be conclusive evidence of the legal appointment of such commissioner, after he has taken an oath in the form prescribed in the first paragraph of section 1-25. The powers of each authority shall be vested in the commissioners thereof. Three commissioners shall constitute a quorum. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present, unless the bylaws of the authority require a larger number. The chief execu-

tive officer, or, in the case of an authority for a town, the governing body of the town, shall designate which of the commissioners shall be the first chairman, but when the office of chairman of the authority becomes vacant, the authority shall select a chairman from among its commissioners. An authority shall select from among its commissioners a vice chairman, and it may employ a secretary, who shall be executive director, and technical experts and such other officers, agents and employees, permanent and temporary, as it requires, and shall determine their qualifications, duties and compensation, provided, in municipalities having a civil service law, all appointments and promotions, except the employment of the secretary, shall be based on examinations given and lists prepared under such law, and, except so far as may be inconsistent with the terms of this chapter, such civil service law and regulations adopted thereunder shall apply to such housing authority and its personnel. For such legal services as it requires, an authority may employ its own counsel and legal staff. An authority may delegate any of its powers and duties to one or more of its agents or employees. A commissioner, or any employee of the authority who handles its funds, shall be required to furnish an adequate bond. The commissioners shall serve without compensation, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties.

§ 8-42. *Commissioners and Employees to Have No Interest in Project*

No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included, or planned to be

included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office.

§ 8-56. *Aid from Federal Government*

In addition to the powers conferred upon an authority by other provisions of this chapter, an authority is empowered to borrow money or accept grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation and to take over or lease or manage any housing project or undertaking constructed or owned by the federal government, and to comply with such conditions and enter into such mortgages, trust indentures, leases or agreements as may be necessary or desirable therefor. It is the purpose and intent of this chapter to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such authority.

Statement of the Case

The petitioners are Housing Authority of the City of New Haven (herein called "the Housing Authority" or "the corporate petitioner") and Polly Moorer and Joseph R. Peters. Said Polly Moorer and Joseph R. Peters are sometimes herein called "the individual petitioners."

The individual petitioners are tenants of the Housing Authority (R. p. 32.)[1] At the time of the commencement

1. References herein to the Record are to the PRINTED RECORD in the court below. References to the PRINTED RECORD are to said record below.

of the action below they were also commisioners of the Housing Authority, having been appointed by the Mayor of the City of New Haven (R. pp. 22, 23, 32), who, under the provisions of the relevant Connecticut statutes [Connecticut General Statutes, Sec. 8-41] had and has the power and duty to appoint commissioners of the Housing Authority.

The corporate petitioner is a local housing authority organized under the laws of the State of Connecticut to carry out the purposes and functions of a local public housing agency under the United States Housing Act of 1937, as amended (42 U.S.C. §§1401 *et seq.*), which act contains provisions to assist low rent housing throughout the country. It was duly and validly created in 1938 pursuant to the provisions of Chapter 33c of the 1937 Supplement of the General Statutes of Connecticut, which chapter, as amended, is now contained in Chapter 128 of the Connecticut General Statutes (R. p. 22). The number of commissioners who are, under Sec. 8-41 of the Connecticut General Statutes, to be appointed for the Housing Authority is five. At the time of the institution of this action the five commissioners appointed by the Mayor of the City of New Haven were Joseph A. Fleischner, Dominic Panagrossi, Carmen Aitro, each of whom is a non-tenant, and petitioners Polly Moorer and Joseph R. Peters, each of whom was at the time of appointment and is now a tenant of the Housing Authority (R. pp. 22, 23, 31, 32).

The Housing Authority and the United States of America have entered into annual contributions contracts whereby the Federal government furnishes financial and other assistance to the Housing Authority for the construction, financing and operation of the Housing Authority's low rental housing projects and other activities of the Author-

ity in accordance with the provisions of the United States Housing Act of 1937, as amended, and other provisions of the laws of the United States and the State of Connecticut (R. p. 25). Pursuant to such financial assistance the Authority has constructed or financed and operates more than 2,800 low rent units of various kinds including elderly units, leased housing units and low rent family units. There are approximately 9,000 people living in said low rent units of the Housing Authority (R. p. 29).

The Housing Authority and the State of Connecticut, acting through various agencies, have entered into various agreements whereby the State furnishes financial and other assistance to the Housing Authority for the construction, financing and operation of the Housing Authority's moderate rental housing projects and for financing and operating other activities and services performed and furnished by the Housing Authority in accordance with the applicable provisions of the statutes of the State of Connecticut [Connecticut General Statutes, §§ 8-38, et seq.] (R. p. 25). Pursuant to such assistance the Housing Authority has constructed and operates approximately 742 moderate rental units which provide housing for approximately 3,000 people (R. p. 29).

On April 12, 1971, at a time when the individual petitioners were serving as commissioners of the Housing Authority, the Attorney General of the State of Connecticut issued his written opinion to the Department of Community Affairs of the State of Connecticut (herein sometimes called "DCA"), advising that "a tenant of a housing authority established under Chapter 128 Gen. Stat. can[not] be appointed and serve as a housing authority commissioner within that same housing authority." The Attorney Gen-

eral concluded that the interest of a housing authority commissioner who is a tenant would raise a conflict of interest in all areas of the commissioners' functions, and this was the basis of his opinion.

As a result of such opinion, respondent DCA Commissioner Donald T. Dorsey stated that he would not accept applications from the Housing Authority nor enter into future contracts with it while members of its board of commissioners were also tenants of the Housing Authority. Respondent DCA commissioner expressly based his statement and his actions on such written opinion of the Attorney General (R. p. 28).

Accordingly, on May 6, 1971, petitioners instituted this action in the Superior Court of Connecticut (a) for a declaratory judgment determining, *inter alia,* whether the individual petitioners were validly appointed as commissioners of the petitioner Housing Authority with the full and unrestricted powers of that office, and whether any tenant of the Housing Authority or of any other Connecticut housing authority may be a commissioner of that housing authority, and (b) for certain injunctive relief (R. pp. 8, 9).

The Connecticut Superior Court, by its judgment filed November 17, 1971, adjudged that the individual petitioners did not qualify as commissioners of the Housing Authority and that a tenant of the Housing Authority or of any other housing authority in Connecticut may not be a commissioner of that housing authority, because such commissioners are barred from being commissioners under said Section 8-42 of the Connecticut General Statutes (App. p. 3b).

In August 1971, while the aforesaid action was pending, the term of petitioner Joseph R. Peters as commissioner

expired. A nontenant successor was appointed in his place in December 1971, after said judgment of the Superior Court had been entered. Petitioner Polly Moorer resigned as a commissioner in December 1971, and the vacancy created by her resignation has not yet been filled (R. pp. 22, 23).

On appeal the Connecticut Supreme Court, by its judgment dated and entered January 18, 1973, affirmed the judgment of the Superior Court, and on the same day issued its opinion that a tenant is not qualified to be a housing authority commissioner, because of his tenancy, basing its decision in part on Section 8-42 of the Connecticut General Statutes and in part on the Connecticut common law (App. pp. 2a-8a).

Both Connecticut courts denied petitioners' claims that (a) said Section 8-42 of the Connecticut General Statutes, if construed and applied to disqualify the individual petitioners or tenants of other Connecticut housing authorities, solely because of their tenancy, from being commissioners of the housing authorities of which they are tenants, is unconstitutional as so construed and applied; (b) that said 42 U.S.C. § 1401 requires that a tenant of a "local housing agency" shall not be barred from serving as a commissioner of the housing authority of which he is a tenant, solely because of such tenancy, and that the constitutional doctrine of Federal supremacy requires the courts of Connecticut to apply said Federal statute as so construed, to the present case and to grant such Federal statute precedence over any Connecticut statute or rule of common law to the contrary; and (c) that if a tenant of a Connecticut housing authority is, solely because of his tenancy, forbidden by Connecticut law, whether by statute or by common law, to act as a commissioner, this constitutes a violation of the privileges and

immunities, the due process, and the equal protection clauses of the Fourteenth Amendment of the United States Constitution, both as to the individual petitioners and as to the Housing Authority.

The Federal Questions Sought to be Reviewed Were Raised in Each Proceeding Below and Decided Adversely to Petitioners.

Petitioners seek to review the judgment of the Supreme Court of the State of Connecticut. The Federal questions which are sought to be reviewed by this Court were raised in the complaint, in the trial stage, and in the appellate stage, before the Superior and Supreme Courts of the State of Connecticut.

The complaint which was issued in instituting the suit set forth the Federal questions. By its answer defendants put in issue petitioners' claims with respect to these Federal questions. In substance paragraph 29 of petitioners' original complaint, which appears on page 7 of the PRINTED RECORD of the lower court, sets forth the claim of petitioners that the individual plaintiffs were duly appointed and qualified and acting as commissioners of the Housing Authority, that the individual plaintiffs have the same right under the Constitution and laws of the United States and of the State of Connecticut to be commissioners of the housing authority in which they are tenants as any other eligible persons who are not tenants, and that the Housing Authority itself has the same right as any other housing authority, none of whose commissioners is a tenant of such authority, under the Constitution and laws of the United States and of the State of Connecticut, to generally conduct its business and to perform its duties and activities as set forth under the laws of the United States and the State of

Connecticut. Petitioners' prayer for relief contained in said complaint as set forth at pages 8 and 9 of said PRINTED RECORD, in addition to requesting a permanent injunction against the various defendants and such other relief in equity as may appertain, also requested the following relief:

> "1. A declaratory judgment determining whether or not:
>
> (a) the plaintiffs Polly Moorer and Joseph R. Peters, being tenants of plaintiff Housing Authority, are validly appointed and duly qualified commissioners of said Housing Authority, with the full and unrestricted rights and powers of that office;
>
> (b) a tenant of the plaintiff Housing Authority may be a commissioner of the Housing Authority, with the full and unrestricted rights and powers of that office, if duly appointed by the appointing authority;
>
> (c) a tenant of a housing authority in Connecticut may be a commissioner of that housing authority, with the full and unrestricted rights and powers of that office, if duly appointed by the appointing authority."

During the trial before the Superior Court of the State of Connecticut the Federal questions sought to be reviewed by this Court were raised in oral argument and through petitioners' claims of law made in their "Memorandum of Plaintiffs in Support of Eligibility of Plaintiffs Moorer and Peters and Other Tenants of Connecticut Housing Authorities to be Appointed and to Act as Commissioners of Such Authorities" which was filed with the trial court after oral presentation. At page 3 of said memorandum petitioners made the following claim:

> ". . . The plaintiffs further submit that, by virtue of applicable Federal housing statutes and

> action taken and contracts entered into thereunder, the constitutional doctrine of Federal supremacy requires that the Connecticut law must in any event bow to the provisions of Federal law which require that tenants shall be eligible to serve as commissioners of housing authorities which are financially assisted by the Federal government, as is the plaintiff Authority. The plaintiffs also contend that constitutional provisions and principles require that tenants may not be discriminated against and treated differently from other persons in respect of their eligibility to be appointed and serve as commissioners of public housing authorities."

Then again at pages 22 and 23 of said Memorandum, petitioners made the following claims with respect to Federal supremacy and the privileges and immunities and the equal protection clauses of the Fourteenth Amendment to the United States Constitution:

> "Since the operations of the plaintiff Housing Authority are dependent upon subsidies from the Federal Government, and since the general policy considerations which control the operation of low-income housing facilities are laid down by the Federal Government, it is submitted that, when the Congress has spoken with respect to tenant housing commissioners as it has in the Housing and Urban Development Act of 1970, and when HUD has spoken as it has in its aforesaid Circular, this must be accepted as an adjudgment by the Federal Government that in low-income housing projects, they can be best operated by not discriminating against and closing the door to tenant commissioners if the appointing official deems a tenant to be the best qualified person to be appointed as commissioner at the time, and that this determination by the Federal

Government supersedes and overrides any determination of the states to the contrary.

• • •

The Fourteenth Amendment provides that no state shall 'make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws.'

A housing commissioner, serving without pay, is performing a public service which should be encouraged and he should not be prevented from acting by an unconstitutional discriminatory bias. It is submitted that these provisions of the Fourteenth Amendment forbid a state to deny a housing authority tenant, who is otherwise well qualified to be a commissioner of the authority, the privilege of being eligible for such post. There is no constitutional basis for making a distinction between tenants and nontenants in their eligibility to be housing authority commissioners. This 'creates a classification which constitutes an invidious discrimination denying' the tenants 'the equal protection of the laws.' See *Shapiro* v. *Thompson,* 394 U.S. 618, 627 (1969), which held that the one-year residence requirement of the Connecticut statutes for welfare recipients was unconstitutional. In that case the Supreme Court refused to accept the alleged money savings to the State as a sufficiently 'compelling' reason to depart from constitutional requirements of equality. To the extent that Sec. 8-42 of the General Statutes may be construed to have this effect, it is unconstitutional as so construed.

The growing increase in the number of public housing tenants creates a large and ever-increasing number of persons in the State and in the country who will become second-class citizens if they are denied the privilege of acting as housing authority commissioners and performing the public duties of such commissioners."

In its Memorandum of Decision the trial court rejected these claims of petitioners. That court stated (App. p. 5b:)

> **"The plaintiffs claim that the individual plaintiffs Moorer and Peters were eligible, under Connecticut law, to be appointed as commissioners of the plaintiff Authority and, having been duly appointed by the authorized appointing official—the Mayor of the City of New Haven—are legally qualified to act as such commissioners in all respects, with the same powers and rights as commissioners who are not tenants of such Authority. The plaintiffs further claim that, by virtue of applicable Federal housing statutes and action taken and contracts entered into thereunder, the constitutional doctrine of Federal supremacy requires that the Connecticut law must in any event bow to Federal provisions which they claim provide that tenants shall be eligible to serve as commissioners of housing authorities which are financially assisted by the Federal government, as is the plaintiff Authority. The plaintiffs also contend that constitutional provisions and principles require that tenants may not be discriminated against and treated differently from other persons in respect of their eligibility to be appointed and serve as commissioners of public housing authorities."**

And then again the court stated in said Memorandum of Decision (App. p. 8b):

> "The remaining claims of the plaintiffs require little consideration. The reading of Plaintiffs' Exhibits A (HUD Circular 7401.1 dated 7/14/70), B (HUD Circular dated 1/28/71 (which supplements Exhibit A)) and C (42 USCA § 1401.1 as amended December 31, 1970, Pub. L. 91-609) demonstrates that the federal government is not opposed to having tenants serve as commissioners and in fact encourages such service. These exhibits also make

> clear the fact that state law and local policy control and that the federal government clearly recognizes this fact. The inescapable conclusion is that the language is precatory and does not command. As a constitutional matter equal protection does not require a person to be treated in the same manner as persons in another classification."

The trial court denied all claims for injunctive relief and entered the following declaratory judgment (App. p. 3b):

> "(1) The plaintiffs Polly Moorer and Joseph R. Peters, by reason of being tenants of the plaintiff Housing Authority, have acquired a direct or indirect interest therein and do not qualify as commissioners of said Housing Authority under Section 8-42 of the General Statutes.
>
> (2) Even if duly appointed by the appointing authority, a tenant of the plantiff Housing Authority under Section 8-42 of the General Statutes may not be a commissioner of the Authority.
>
> (3) Even if duly appointed by the appointing authority a tenant of a Housing Authority in Connecticut may not be a commissioner of that housing authority with the full and unrestricted rights and powers of that office by virtue of the disqualification provisions of Section 8-42 of the General Statutes."

On appeal, petitioners raised the Federal questions sought to be reviewed by this Court through the assignments of error, their appellate brief and oral argument before the Supreme Court of Connecticut. At pages 35 through 38, inclusive, of the PRINTED RECORD, the trial court, in its finding, found at paragraphs 95 through 109, inclusive, thereof that the petitioners made the claims of law herein sought to be reviewed, each of which the court denied (App. p. 3d). Petitioners in their assignments of

error, which appear at pages 38 and 39 of the PRINTED RECORD at paragraph 5 thereof, claimed that the court erred in overruling the claims of law set forth in said paragraphs 95 through 109, inclusive, of the finding. In spite of said assignments of error the court below made no corrections to the finding. PRINTED RECORD, p. 39.

In oral arguments before the Supreme Court of Connecticut petitioners raised the Federal questions and these questions are set forth in petitioners' appellate brief. In that brief petitioners claim that the Federal law requires that tenants shall be eligible to be commissioners. BRIEF OF PLAINTIFFS, pp. 9, 10, 11, 12 and 13. At pages 23 through 29 of said brief, petitioners set forth their arguments that Federal law requires that tenancy in a public housing authority shall not disqualify a person from being commissioner and that the doctrine of Federal supremacy is applicable and further that the privileges and immunities, the due process and the equal protection clauses of the Fourteenth Amendment to the United States Constitution forbid tenancy in a public housing authority from disqualifying a person from being a commissioner. These claims of petitioners relating to the Federal questions sought to be reviewed in this court were rejected by the Supreme Court of Connecticut as set forth in its opinion and decision (App. p. 2a).

Reasons for Granting the Writ

I

This is the First Case in this Court Involving Eligibility of a Tenant to Hold the Office of Housing Authority Commissioner.

This is the first case in this Court involving the deprivation by a state of the right and privilege of a tenant of a public housing authority to be a commissioner of that authority and the right of such authority to have the benefit of tenant participation in its direct management. It ought

to be determined now by this Court, as a matter of uniform national application, whether this is a deprivation of a Federal statutory and constitutional right and privilege of the large numbers of such tenants and housing authorities throughout the country.

An examination of the statutes of all fifty states shows that local housing authorities are authorized in each state. The standard pattern of the legislation is to provide for the appointment of commissioners and to forbid self interest of the commissioners in property included in the project or in contracts with the authority. Most of the legislation on these matters is worded like Sections 8-41 and 8-42 of the Connecticut General Statutes. State legislation creating local housing authorities was related to and was adopted as a part of the Federal low-rent housing program. Ebenstein, *The Law of Public Housing,* 23 Minn. L. Rev. 878 (1939).

Statutes of forty-five states, including those of Connecticut, are silent as to whether tenants may be commissioners. Five of the state statutes have provisions regarding tenant commissioners: California, 41A Cal. Code, Secs. 34270, 34281 (full unqualified authorization); Massachusetts, Ann. Laws of Mass., Ch. 121, Sec. 26L (flat prohibition); Michigan, Mich. Comp. L. Ann., Sec. 125.654 (authorization of limited number); New York, Public Housing Law (44A Consol. Laws) Sec. 30 (authorization of not more than one member); Rhode Island, Gen. L. of R.I., Secs. 45-25-10, 45-25-13 (3 of the 11 commissioners of the Providence housing authority "shall be occupants of public housing").

Attorney Generals in five states, where the statutes were at the time silent as to tenant commissioners, have given their opinions that housing authority tenants who were

already tenants were eligible to be appointed as commissioners of the authority where they reside: California, OAG No. 67-166, April 4, 1968; Kentucky, OAG No. 70-135, February 24, 1970 (unpublished); Maine, OAG dated April 25, 1973 (unpublished); New York, Informal opinion dated May 18, 1967; Ohio, OAG No. 71-057, September 22, 1971. No state Attorney General in a state other than Connecticut appears to have given an opinion that a then resident tenant of a housing authority is ineligible to be appointed as a commissioner of that authority.

As shown in the Statement of the Case, the petitioner Housing Authority operates, in New Haven, more than 2,800 low rent units of various kinds including elderly units, leased housing units, and low rent family units; there are approximately 9,000 people living in such units. In addition, the petitioner Housing Authority operates 742 moderate rental units with approximately 3,000 individuals living therein.

There is no evidence in the Record as to the numbers of housing authorities operating federally subsidized low rent housing units elsewhere in Connecticut or in the other states. However, petitioners respectfully request that this Court take judicial notice of the fact that there are large numbers of low rent Federally subsidized housing authorities operating in the United States at the present time, and that the aggregate numbers of tenants residing in housing units operated by such authorities is large. Furthermore, there is included as Appendix C a letter dated May 23, 1973 from the National Association of Housing and Redevelopment Officials to one of the counsel for petitioners, stating that the total number of housing units operated in the fifty states as of June 30, 1972 by approximately 2,460 local housing authorities was 1,019,481, which housed approximately 3.3 million persons (App. pp. 1c-2c). The basis for such letter was stated to be "Appropriation testimony"

given by the Secretary of HUD in May, 1973. More exact citation to such testimony is not available at this time.

II

A ruling by this court as to the federal mandate stated in 42 U.S.C. §1401 is necessary.

It is vital for the courts of all states, in passing upon their own state laws with the respect to the appointment of tenant commissioners, to have a determination by this Court as to the correct construction and application of 42 U.S.C. § 1401. The Connecticut Supreme Court, in its decision as to the interpretation, effect and validity of that section, as applied by that court, has decided this federal question of substance which has not heretofore been determined by this Court.

The following sentence was added to Section 1 of the United States Housing Act of 1937, as amended (42 U.S.C. § 1401, which is the basic policy statement of such Act) by Public Law 91-609 of the Laws of the 91st Congress, Second Session, approved December 31, 1970, 84 Stat. 1779:

> "It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project."

Petitioners have contended in the Connecticut courts that this is a Federal mandate that a tenant of a Federally subsidized local housing authority shall not be ineligible, solely because of his status as tenant, to be appointed as a commissioner of the authority of which he is a tenant, and that the constitutional doctrine of Federal Supremacy requires that this Federal statute shall have precedence over any state statute or state rule of common law to the contrary.

The Connecticut courts have rejected this construction and application of this sentence of 42 U.S.C. § 1401. They have held, on the contrary, that, in spite of this sentence, the law of Connecticut may and does ban a tenant, solely because of such tenancy, from being eligible to be a commissioner.

In fact, however, such a construction and application as that made by the courts below, would seem to require a determination that Congress, in adding the final sentence of 42 U.S.C. §1401, had labored and brought forth nothing. It indeed seems unlikely that Congress would go through the immense mechanics of adopting amendatory legislation only to have such legislation say, in a merely precatory way, "We think it would be nice if tenants were to become local housing agency commissioners, but it's just a thought for the states to consider." Rather, good sense and good statutory construction require that the sentence have a substantive effect, viz. to declare a Congressional policy that tenants shall be eligible to be commissioners. This requires that the word "should", in that final sentence of §1401, be given the meaning of "shall". See also the discussion under III, *infra.*

There is substantial authority to read the word "should" as "shall". The second meaning of "should" in Merriam-Webster's Dictionary, 3d Ed. (1964), p. 2104, is:

> "2.—used in auxiliary function to express duty, obligation, necessity, propriety or expediency (for 'tis commanded I should do so—Shak.) . . . (the law was then passed . . . that every senator should take an oath—J. A. Froude) (in such cases the officer should first give notice to those in the house—Paul Wilson)"

Similarly, Canon 5 of the Lawyers' Code of Professional Responsibility specifies that "A lawyer should exercise independent professional responsibility on behalf of a client," which seems clearly to impose a mandatory responsibility.

Statutory use of "should" was held to be mandatory in *Fegan* v. *Lykes Bros.*, 198 La. 312, 3 So. 2d 632, and in *Town of Edgewater* v. *Liebhardt*, 32 Colo. 307, 76 P. 366.

One of the objectives of the Federal low-rent housing program, as stated in the last sentence of 42 U.S.C. §1401, is to permit tenants to participate in local management as commissioners. Thus, "Congress has occupied the field, . . . [and] the dominant interest of the Federal government precludes state intervention . . . with the operation of the federal plan . . ." *Pennsylvania* v. *Nelson*, 350 U.S. 497, 509 (1956).

In any event, irrespective of the final decision of this Court, the Court should assume jurisdiction of the matter in order to make a ruling that will be authoritative throughout the country as a final determination of the effect and application of the Congressional statement of policy as to tenant commissioners contained in 42 U.S.C. § 1401.

III

This court should decide whether there shall be a uniform standard of eligibility of tenants to be commissioners of federally subsidized housing authorities under 42 U.S.C. §1401, or whether varying standards may be prescribed by the states.

Housing authority tenants and local housing authorities throughout the country are entitled to know whether a state, constitutionally, (a) may deprive such tenants of all right to be commissioners of the authorities whose tenants they are, or (b) may not, solely because of such tenancy, deprive them of such right, or (c) may impose certain restrictions and limitations on their right to be commissioners; so that they and others interested in their welfare can endeavor to secure remedies by appropriate legislation.

A decision on the issues raised is necessary for future guidance. Until this Court has accepted for review and has decided the question as to whether a tenant has either an absolutely protected Federal right (whether by virtue of 42 U.S.C. § 1401 or by the provisions of the Fourteenth Amendment) not to be barred, solely because of such tenancy, from being a commissioner, or has no such right, or has a right which is not absolute but can be subjected to certain limitations, the tenants and housing authorities and other interested persons in the various states will not be in a proper position to propose or support such legislation as is appropriate in the light of the decision of this Court.

This Court should assume jurisdiction in order to provide guidelines for the scope of such legislation, e.g. whether a state may impose some restrictions but not others on housing authority tenants as commissioners. This Court has recently provided such guides in its abortion decisions by setting some areas in which prohibitory state legislation is absolutely proscribed, some areas in which regulatory legislation is permitted, and some areas in which prohibitory legislation is permitted. *Roe* v. *Wade*,—U.S.—, 35 L. Ed. 2d 147 (1973).

This case presents a new example of deprivation of civil rights by arbitrarily creating a class of persons who are to be deprived of rights shared by all other persons. The lower courts have decreed that a tenant of a housing authority can not be a commissioner of that housing authority because of his status as a tenant.

The individual petitioners and other tenants of public housing authorities have "the right to be considered" for the office of housing commissioner "without the burden of invidiously discriminatory disqualifications. The State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate

federal constitutional guarantees." *Turner* v. *Fouche*, 396 U.S. 346, 362-363 (1970).

This Court should consider and determine whether such a deprivation of rights ought to be upheld for the narrow reasons of alleged conflict of interests enunciated by the court below or whether larger interests of the individual tenants involved should be given pre-eminence. Congress has itself determined that tenancy in a federally assisted local housing agency does not constitute such a conflict of interest as to disqualify a person for that reason alone from being a commissioner of that housing agency. This determination by Congress has unquestionably been made, whether or not the word "should" in the last sentence of 42 U.S.C. 141 is construed as mandatory ("shall") or as something less.

The absolute prohibition against a housing authority tenant being a commissioner which has been decreed by the court below goes beyond a rational accomplishment of the purpose stated by that court, viz. to prohibit a conflict of interest. It is clear that that court has gone too far in centering exclusively on a limited matter at the expense of the constitutional rights of all the petitioners. Other states, through their attorney generals' opinions, have not found it necessary to completely exclude tenants from being commissioners in order to prevent conflict of interest.

IV

Denial of the petition will open the way to compelling surrender of constitutional rights as condition of receiving benefits of United States Housing Act of 1937.

In this case the petitioners assert that a state court has, in effect, put restrictions in an unconstitutional way, upon the rights and privileges which Congress has granted to

tenants of Federally subsidized local housing authorities (and to such authorities). This Court ought to accept jurisdiction in order to determine whether this situation comes within the general principles that the Government may not compel the surrender of a constitutional right as a condition of granting governmental favor.

It is important for persons who are public housing tenants and for those persons who may be considering whether to become public housing tenants and thereby receive governmental assistance under the Housing Act of 1937, as amended, to know whether rights and privileges must be surrendered in order to receive such benefits. If a tenant (and each member of his family) must give up the right to participate in his own self governance as a commissioner of the housing authority where he lives, he should have the right to know this. If that right or privilege cannot be taken away from a tenant simply and solely because he is a tenant, he should have the right to know that, too. Acceptance by this Court of jurisdiction over this case will enable such a person to know his rights and his disabilities and then conduct himself accordingly. There are large numbers of persons in the nation who are involved or potentially involved in this situation and to whom a decision by this Court in this case is important.

It is too high a price to charge, for the Federal government or any state government to demand that a tenant shall be required to surrender his right to be eligible for the office of housing authority commissioner, in order to receive benefits under the Housing Act of 1937, as amended.

> "The most clearly defined problem posed by government largess is the way it can be used to apply pressure against the exercise of constitutional rights. A first principle should be that government must have no power to 'buy up' rights guaranteed by the Constitution. . .

> "This principle is in a sense a revival of the old but neglected rule against unconstitutional conditions, as enunciated by the Supreme Court:
>
> > 'Broadly stated, the rule is that the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal constitution.' [Citing *United States* v. *Chicago*, M., St. P. & P.R.R., 282 U.S. 311, 328-29]"

Reich, *The New Property*, 73 Yale L. J. 733, 779-780 (1964); see also *Thorpe* v. *Housing Authority of Durham*, 386 U.S. 670, 678-679 (1967).

Professor Reich also points out (73 Yale L. J. at pp. 785-786):

> ". . . The aim of [recent statutory public benefits] is to preserve the self-sufficiency of the individual . . . and to allow him to be a valuable member of a family and a community; in theory they represent part of the individual's rightful share in the commonwealth . . ."

CONCLUSION

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

DONALD E. COBEY,
CHARLES W. DIBBELL,
RONALD J. FRACASSE
205 Church Street
New Haven, Connecticut 06506
Counsel for Petitioners

June 11, 1973

APPENDIX A

Judgment and Opinion of Connecticut Supreme Court

STATE OF CONNECTICUT

SUPREME COURT

AT HARTFORD

First Tuesday of December, 1972.

No. 7160

Housing Authority of the City of New Haven, a public body corporate and politic organized and existing under and in accordance with the provisions of the laws of the State of Connecticut and having its principal place of business in New Haven, Connecticut, and Polly Moorer and Joseph R. Peters, each of the City and County of New Haven

vs.

Donald T. Dorsey, Commissioner of the Department of Community Affairs of the State of Connecticut; Robert I. Berdon, Treasurer of the State of Connecticut; Adolph G. Carlson, Commissioner of Finance and Control of the State of Connecticut; Nathan G. Agostinelli, Comptroller of the State of Connecticut, and Bartholomew Guida, Mayor of the City of New Haven.

Judgment

This appeal by the plaintiffs from the judgment of the Superior Court for the County of New Haven at New

Haven was filed with the Clerk of said Court on the 1st day of December, 1971, and said appeal came thence to the 27th day of March, 1972, when the appellant filed his assignment of errors, as may appear in the certified transcript of record on file in this Court, and said appeal came thence to this Court at its term held at Hartford on the first Tuesday of April, 1972, and thence to the present term when the parties appeared and were fully heard.

And now this Court finds there is no error.

Whereupon it is adjudged that said judgment be confirmed and established and that the appellees recover of the appellants costs taxed at

Date of Judgment: January 18, 1973.

By the Court,

EDWARD HORWITZ
Clerk

Opinion

(34 Conn. L. J., No. 31, p. 1, January 30, 1973)

SUPREME COURT

DECEMBER TERM, 1972

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, *et al.* v. DONALD T. DORSEY, COMMISSIONER, DEPARTMENT OF COMMUNITY AFFAIRS, *et al.*

Action for a declaratory judgment determining whether tenants qualified as commissioners of a housing authority, for an injunction and other relief, brought to the Superior

Court in New Haven County and tried to the court, Wall, J.; the court rendered a declaratory judgment of the rights of the parties, from which the plaintiffs appealed. No error.

Ronald J. Fracasse, with whom were Donald E. Cobey and, on the brief, Charles W. Dibbell, for the appellants (plaintiffs).

John K. Jepson, assistant attorney general, with whom, on the brief, was Robert K. Killian, attorney general, for the appellees (named defendant *et al.*).

Bogdanski, J. In this action for a declaratory judgment and injunctive relief, the plaintiffs, the Housing Authority of the City of New Haven, Polly Moorer and Joseph R. Peters, are seeking an adjudication as to whether Moorer and Peters, tenants of the housing authority, are each legally qualified to hold the position of housing commissioner of the plaintiff housing authority. The trial court found that the plaintiff tenants are not legally qualified to hold these positions and rendered a declaratory judgment to that effect, from which the plaintiffs have appealed to this court.

In the first two assignments of error the plaintiffs claim: (1) that the court erred in refusing to find material facts set forth in certain paragraphs of the draft finding which they claim were admitted or undisputed and (2) that the court erred in finding facts contained in certain paragraphs of the finding without evidence. Since the plaintiffs failed to brief these assignments of error pertaining to the finding, they are treated as abandoned; *State* v. *Grayton*, 163 Conn. (33 Conn. L.J., No. 48, pp. 9, 10), *State* v. *Benson*, 153 Conn. 209, 217, 214 A.2d 903.

The remaining assignments of error challenge the conclusions reached by the court on the basis of facts found and present the basic issue as to whether the trial court erred in finding that a housing authority tenant may not

serve as a commissioner of that housing authority because such service would create a conflict of interest under § 8-42 of the General Statutes and under the common law.

The facts can be summarized as follows: On April 12, 1971, the attorney general of the State of Connecticut issued a legal opinion to the effect that the law bars a tenant of a housing authority from serving as a commissioner of the housing authority in whose project he resides. Based on this opinion the defendant Donald T. Dorsey, Commissioner of the Department of Community Affairs of the State of Connecticut, withheld substantial sums of money from the plaintiff housing authority because he felt that the board of commissioners of the housing authority was improperly constituted. This action then was instituted.

The plaintiff housing authority was organized and created by resolution of the board of aldermen of the City of New Haven pursuant to chapter 128 of the General Statutes, § 8-38 *et seq.* The plaintiff-tenants, Moorer and Peters, and the other commissioners of the plaintiff authority were appointed by the mayor of New Haven.

The plaintiffs claim that Moorer and Peters were eligible, under Connecticut law, to be appointed commissioners and, having been duly appointed, are legally qualified to act as commissioners in all respects, with the same powers and rights as commissioners who are not tenants of the housing authority. The plaintiffs further contend that by virtue of applicable federal housing statutes and contracts entered into thereunder, the constitutional doctrine of federal supremacy requires that Connecticut law bow to federal provisions which, they claim, provide that tenants shall be eligible to serve as commissioners of housing authorities. The plaintiffs further assert that constitutional provisions bar discrimination against tenants with respect to their eligibility to be appointed and serve as commissioners of public housing authorities.

The trial court concluded that tenants could control the operation of the plaintiff housing authority when a base quorum is present and the quorum includes the two tenant commissioners, that a conflict-of-interest problem exists even when only one commissioner is a tenant, and that this is so even though a tenant commissioner acts in good faith, since a person cannot serve himself as both landlord and tenant. The court further found that the failure of the legislature to amend § 8-42[1] after the date of the attorney general's opinion relating thereto was an acquiescence by the legislature to that opinion; that state law and local policy govern the question whether a tenant of a public housing authority, subsidized by federal funds, may at the same time be a commissioner of that housing authority, and that the provisions of 42 U.S.C. § 1401 do not prohibit the State of Connecticut from barring any person from serving as a commissioner of the plaintiff authority because of his tenancy in housing operated by that authority.

A housing authority is a public corporation created by the municipality to exercise certain delegated sovereign powers pursuant to §§ 8-40—8-81 of the General Statutes. It is governed by a board of five commissioners who are public officers. Three essential characteristics differentiate a public office from private employment: (1) an authority

1. "[General Statutes] Sec. 8-42. COMMISSIONERS AND EMPLOYEES TO HAVE NO INTEREST IN PROJECT. No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office."

conferred by law; (2) a fixed term of office; and (3) the power to exercise some portion of the sovereign functions of government. An individual so invested is a public officer. *Kelly* v. *Bridgeport,* 111 Conn. 667, 670-71, 151 A. 268. His status forbids him from placing himself in a position where his private interest conflicts with his public duty. His good faith is of no moment because it is the policy of the law to keep him so far from temptation as to insure the exercise of unselfish public interest. *Low* v. *Madison,* 135 Conn. 1, 8, 60 A. 2d 774. This policy is not limited to a single category of public officer but applies to all public officials. *Id.,* 4-6. " 'Anything which tends to weaken . . . [public] confidence and to undermine the sense of security for individual rights . . . is against public policy.' " *Stocker* v. *Waterbury,* 154 Conn. 446, 454, 226 A. 2d 514.

Within the context of this common-law standard the General Assembly has provided by statute that no commissioner of a housing authority shall acquire any interest, direct or indirect, in any housing project. General Statutes § 8-42. An "interest" has been defined as having a share or concern in some project or affair, as being involved, as liable to be affected or prejudiced, as having self-interest, and as being the opposite of disinterest. *State* v. *Murtes,* 232 La. 486, 490, 94 So. 2d 446; see also *Swartout* v. *Holt,* 272 S.W. 2d 756, 761 (Tex. Civ. App.).

The interests of a housing authority commissioner would center on the points at which management policies and functions of the authority come into contact with individual tenants. These include the selection and retention of tenants, the determination of rents to be charged, the services and other benefits to be furnished, and the enforcement of the rules governing the conduct and rights of the tenants. In fixing rents the commissioners must consider the payments on the principal and interest on the bonded indebted-

ness, the cost of insurance and administrative expenses, the amounts to be set aside in reserve for repair, maintenance and replacements, and vacancy and collection losses. General Statutes §§ 8-45, 8-72.

The task of fixing rent charges is such that a tenant commissioner might be called to vote to increase his own rent in order to amortize and service the authority's debt obligation. If he is reluctant to increase rents which include his own, the housing authority might fail to pay its bonded indebtedness and permit unchecked physical depreciation of the properties. Matters on which the housing authority votes include the setting and the enforcing of its policies as to delinquent rents and the eviction of tenants. As a housing authority commissioner, a tenant would also be required to participate in voting on decisions involving the hiring and firing of housing authority personnel who deal with him and his family from day to day.

Thus, whether or not the tenant as a housing authority commissioner is in fact benefiting himself individually by his vote, his personal interests are always directly or indirectly involved in his vote on the commission. This is not to say that his personal interests are inevitably and on all occasions antagonistic to the interests of the housing authority. The fact, however, that he is a tenant makes it possible for his personal interests to become antagonistic to the faithful discharge of his public duty. 10 McQuillin, Municipal Corporations (3d Ed.Rev.1966) § 29.97.

It is thus clear that tenants, acting as housing authority commissioners, could control the operations of a housing authority. We, however, construe the legislature's failure to amend § 8-42 after the attorney general's opinion that the statute barred tenants from being commissioners as an indication of legislative intent that tenants should not be

placed in a position where they could control housing authorities in whose properties they were tenants.

As already noted, the plaintiffs have strongly urged that federal law and regulation not only authorize but require that tenants be eligible to serve as commissioners on local housing authorities.[2] The plaintiffs have been unable, however, to produce any evidence to support this claim. In fact, the plaintiffs' evidence demonstrated that local policies and laws govern. Section 1401 of 42 U.S.C., entitled "Declaration of policy," purports to "vest in the local public housing agencies the maximum amount of responsibility." The addition of the sense of Congress to § 1401 on December 31, 1970, did not eliminate the above quoted policy nor did it impose any mandatory requirement.

This claim, and the assertion that constitutional provisions require that tenants be not discriminated against and treated differently from other persons with respect to their eligibility to be appointed and serve as commissioners of public housing authorities, are without merit.

Since the unchallenged findings of fact amply support the conclusions reached by the trial court, the judgment rendered by it cannot be disturbed.

There is no error.

In this opinion the other judges concurred.

---

2. The following "Policy Statement" is now incorporated into § 1 of Chapter 896 of the United States Housing Act of 1937, 50 Stat. 888 as amended, having been added by § 211 of the Housing and Urban Development Act of 1970 (P.L. 91-609, Laws of the 91st Congress, Second Session, approved December 31, 1970, 84 Stat. 1799, 42 U.S.C. § 1401):

> "It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project."

APPENDIX B

Judgment and Opinion of Connecticut Superior Court

STATE OF CONNECTICUT

SUPERIOR COURT

COUNTY OF NEW HAVEN

At New Haven November 17, 1971

No. 12 71 35

Housing Authority of the City of New Haven, a public body corporate and politic organized and existing under and in accordance with the provisions of the laws of the State of Connecticut and having its principal place of business in New Haven, Connecticut, and Polly Moorer and Joseph R. Peters, each of the City and County of New Haven

vs.

Donald T. Dorsey, Commissioner of the Department of Community Affairs of the State of Connecticut; Robert I. Berdon, Treasurer of the State of Connecticut; Adolph G. Carlson, Commissioner of Finance and Control of the State of Connecticut; Nathan G. Agostinelli, Comptroller of the State of Connecticut, and Bartholomew Guida, Mayor of the City of New Haven

Present, Hon. ROBERT A. WALL, Judge

Judgment

This action, by writ and complaint dated May 6, 1971, claiming therein as follows:

"1. A declaratory judgment determining whether or not:

(a) the plaintiffs Polly Moorer and Joseph R. Peters, being tenants of plaintiff Housing Authority, are validly appointed and duly qualified commissioners of said Housing Authority, with the full and unrestricted rights and powers of that office;

(b) a tenant of the plaintiff Housing Authority may be a commissioner of the Housing Authority, with the full and unrestricted rights and powers of that office, if duly appointed by the appointing authority;

(c) a tenant of a housing authority in Connecticut may be a commissioner of that housing authority, with the full and unrestricted rights and powers of that office, if duly appointed by the appointing authority.

2. A permanent injunction directing Donald T. Dorsey, Commissioner of the Department of Community Affairs of Connecticut, Robert I. Berdon, Treasurer of Connecticut, Adolf G. Carlson, Commissioner of Finance and Control of Connecticut, and Nathan G. Agostinelli, Comptroller of Connecticut, not to refuse to honor, recognize and perform all presently existing and future agreements, contracts and grants, and applications therefor, relating to the Housing Authority of the City of New Haven on the ground that one or more commissioners of said Housing Authority are tenants of said Housing Authority.

3. Such other relief as to equity may appertain."

came to this Court on the fourth Tuesday of May, 1971, and thence to June 16, 1971 when the Court, on plaintiffs' motion, ordered that notice of the institution and pendency of this action be given to the parties, as on file, and thence

to the present time when the parties appeared and were at issue to the Court, as on file.

The Court, having heard the parties, finds that notice of the institution and pendency of this action was given to all persons having an interest in the subject matter of said complaint in addition to the parties to this action, and further finds the issues for the defendants.

Whereupon it is adjudged and decreed as a declaratory judgment of the rights of the parties that:

(1) The plaintiffs Polly Moorer and Joseph R. Peters, by reason of being tenants of the plaintiff Housing Authority, have acquired a direct or indirect interest therein and do not qualify as commissioners of said Housing Authority under Section 8-42 of the General Statutes.

(2) Even if duly appointed by the appointing authority a tenant of the plaintiff Housing Authority under Section 8-42 of the General Statutes may not be a commissioner of the Authority.

(3) Even if duly appointed by the appointing authority a tenant of a Housing Authority in Connecticut may not be a commissioner of that housing authority with the full and unrestricted rights and powers of that office by virtue of the disqualification provisions of Section 8-42 of the General Statutes.

And it is further adjudged that the plaintiffs are not entitled to any injunctive relief.

WALL,
Judge

Opinion

MEMORANDUM OF DECISION

This is an action for a declaratory judgment and for certain claimed injunctive relief. The plaintiffs are Housing Authority of the City of New Haven and Polly Moorer and Joseph R. Peters, who are commissioners and also tenants of the Authority. The defendants are Donald T. Dorsey, Commissioner of the Department of Community Affairs of the State of Connecticut and certain other officials of the State of Connecticut, and the Mayor of the City of New Haven.

The action was instituted as a result of the legal opinion of the Attorney General of the State of Connecticut that Connecticut law "bar[s] a tenant of a Connecticut housing authority from serving as a commissioner of the housing authority in whose project he resides." [Letter to Commissioner Dorsey dated April 12, 1971, Plaintiffs' Exhibit F.] Based upon this opinion the Connecticut Department of Community Affairs has withheld substantial sums from the plaintiff Housing Authority because Commissioner Dorsey feels that the board of commissioners of the Authority is improperly constituted, as stated in the Attorney General's opinion.

Plaintiff Housing Authority was organized and created by resolution of the Board of Aldermen of the City of New Haven adopted July 11, 1938, pursuant to the provisions of Chapter 33c of the 1937 Supplement to the General Statutes of Connecticut, which, as amended, is now contained in Chapter 128 of the General Statutes. (§§ 8-38 et seq.) Plaintiffs Moorer and Peters and the other present commissioners were appointed by the Mayor of the City of New Haven.

After service of the original complaint, pursuant to an order of notice signed by a judge of this court, notice of this action was given by publication in newspapers circulated generally in all parts of the State where housing authorities are located. The notice was addressed to public housing authorities, tenants thereof, chief executive officers of municipalities in the State of Connecticut other than towns, governing bodies of towns, and taxpayers. It is clear that this notice was directed properly to all the persons having an interest in the subject matter of this complaint in addition to the parties to this action.

The plaintiffs claim that the individual plaintiffs Moorer and Peters were eligible, under Connecticut law, to be appointed as commissioners of the plaintiff Authority and, having been duly appointed by the authorized appointing official—the Mayor of the City of New Haven—are legally qualified to act as such commissioners in all respects, with the same powers and rights as commissioners who are not tenants of such Authority. The plaintiffs further claim that, by virtue of applicable Federal housing statutes and actions taken and contracts entered into thereunder, the constitutional doctrine of federal supremacy requires that the Connecticut law must in any event bow to Federal provisions which they claim provide that tenants shall be eligible to serve as commissioners of housing authorities which are financially assisted by the Federal government, as is the plaintiff Authority. The plaintiffs also contend that constitutional provisions and principles require that tenants may not be discriminated against and treated differently from other persons in respect of their eligibility to be appointed and serve as commissioners of public housing authorities.

The pertinent statute is as follows:

"Sec. 8-42. *Commissioners and employees to have no interest in project.* No commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project, nor shall he have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of an authority owns or controls an interest, direct or indirect, in any property included, or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office."

The following principles of our case law are applicable to the situation at hand:

"The issue of disqualification is governed by the criteria enumerated in *Low* v. *Madison,* 135 Conn. 1. The principles of law are not restricted to zoning boards. They apply to the exercise of powers of all municipal agencies and boards which affect property rights in the community. His status forbids the public officer from placing himself in a position where his private interest conflicts with his public duty." *Stocker* v. *Waterbury,* 154 Conn. 446, 454.

"A public official owes an undivided duty to the public whom he serves, and he is not permitted to place himself in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than in the best interest of the public. A man cannot serve two masters at the same time and the public interest should not be entrusted to an official who has a pecuniary,

personal or private interest, which is or may be in conflict with the public interest." *Genkinger* v. *New Castle,* 368 Pa. 547; 84 A.2d 303.

"A beneficial interest disqualifies like a technical interest. The statute speaks of interest generally as a disqualification." *Hawley* v. *Baldwin,* 19 Conn. 584, 589. "One ought not to be a judge in his own case is a principle of natural justice." *Ellis* v. *Emhart,* 150 Conn. 501, 505.

"It is the policy of the law to keep the official so far from temptation as to ensure his unselfish devotion to the public interest." *Mills* v. *Town Plan,* 144 Conn. 493, 498.

Our courts have stressed that public officials shall avoid not only real conflicts of interest but apparent conflicts as well. Where public confidence is at issue, what people think is true may be as important as what is true.

"As in all conflict of interest situations the proper test is not whether an actual conflict exists but whether the possibility of a conflict exists." See *Ins. Dept.* v. *Johnson,* 248 A.2d 308, 311.

"A personal interest which will interfere with the unbiased discharge of the officer's duty to the public may render one ineligible." § 12.48 McQuillin on Municipal Corporations, page 265; *Raymond* v. *Bartlett,* 175 P.2d 288.

Plaintiffs' Exhibit D was Section 4 of Article III of the By Laws of the New Haven Housing Authority. That section provides that three commissioners shall constitute a quorum. In their complaint the plaintiffs allege that two of the five commissioners are tenants of the housing authority which they serve. Thus it can be seen that tenants can control the operation of the New Haven Housing Authority when a bare quorum is present, which quorum includes the two tenant commissioners.

It is not important whether this will happen, but it is important that it can happen. The conflict of interest prob-

lem exists even where only one commissioner is a tenant. The tenant vote could be decisive on any particular issue. Even if the tenant did not vote, his arguments could have been the deciding factor. Perhaps the tenant could avoid all participation. This, however, would be a total disregard of his duty as a public official.

It appears in Connecticut that a tenant cannot legally serve as a housing authority commissioner. Whether or not the tenant acts in total good faith is unimportant. Whether he runs afoul of Section 8-42, Connecticut General Statutes, or the well-imbedded common law concepts of conflict of interest, or both, is unimportant. He simply cannot serve two masters—himself as landlord and himself as tenant. The relationship is such a close one that disqualification is conclusively and irrebuttably presumed where a juror stands to either litigant in relation of landlord and tenant. *McCarten* v. *Connecticut Company,* 103 Conn. 537. The statute in question is designed to cover a situation similar to that in General Statutes § 10-232. The relationship is not a remote or nebulous interest as claimed by the plaintiffs in referring to *Anderson* v. *Zoning Commission,* 157 Conn. 285, 291.

A concise enumeration of the powers and duties of the commissioners which could bring about conflicts of interest is set forth on the third page of the attorney general's opinion. Exhibit F. Attempts have been made to amend the statute in the general assembly but without avail.

"Where legislature has failed over a long period to make any change in a statute following its interpretation by the attorney general, it amounts to an acquiescence worthy of careful consideration in an inquiry into the intention of that body." *School Districts* v. *Cook,* 424 P.2d 751, 756.

The remaining claims of the plaintiffs require little consideration. The reading of Plaintiffs' Exhibits A (HUD

Circular 7401.1 dated 7/14/70), B (HUD Circular dated 1/28/71 (which supplements Exhibit A)) and C (42 USCA § 1401.1 as amended December 31, 1970, Pub. L. 91-609) demonstrates that the federal government is not opposed to having tenants serve as commissioners and in fact encourages such service. These exhibits also make clear the fact that state law and local policy control and that the federal government clearly recognizes this fact. The inescapable conclusion is that the language is precatory and does not command. As a constitutional matter equal protection does not require a person to be treated in the same manner as persons in another classification.

It is not the province of the court to determine what matters a tenant commissioner could or could not resolve or act upon. Such standards are the prerogative of the legislative department.

Claims for injunctive relief are denied.

A declaratory judgment may enter that:

(1) The plaintiffs Polly Moorer and Joseph R. Peters, by reason of being tenants of the plaintiff Housing Authority, have acquired a direct or indirect interest therein and do not qualify as commissioners of said Housing Authority under Section 8-42 of the General Statutes.

(2) Even if duly appointed by the appointing authority a tenant of the plaintiff Housing Authority under Section 8-42 of the General Statutes may not be a commissioner of Authority.

(3) Even if duly appointed by the appointing authority a tenant of a Housing Authority in Connecticut may not be a commissioner of that housing authority with the full and unrestricted rights and powers of that office by virtue of the disqualification provisions of Section 8-42 of the General Statutes.

WALL, J.

(Filed: 11-17-71)

APPENDIX C

[LETTERHEAD OF]
NATIONAL ASSOCIATION OF HOUSING AND REDEVELOPMENT OFFICIALS

May 23, 1973

Mr. Charles W. Dibbell
Stoddard, Persky, Eagan & Cobey
205 Church Street
New Haven, Connecticut 06506

Dear Mr. Dibbell:

Here are some responses to the questions raised in your letter of May 3.

1. *The number of local housing authorities:* As of June 30, 1972, 2,460 local housing authorities had units *under management* in 3,371 localities. The total number of local housing authorities including those with *no units* in management is about 3,300.

2. *Local housing authorities now operate in all 50 States.* In some States, the only public housing is housing on Indian Reservations where the Tribe is the local authority.

3. *The total number of housing units operated* by the 2,460 housing authorities as of June 30, 1972 was *1,019,481.*

4. The total number of units in operation as of June 30, 1972 housed *3.3 million persons, including 1.9 million minors.*

In response to your question to States which may specifically authorize tenants as commissioners, my recollection is that Michigan does; and that Rhode Island had such a provision which was overturned by the court. Most State laws did not specifically mention eligibility of tenants to become commissioners, prior to 1970. In that year, the Congress added a sentence to the national housing act stating that: "It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low rent housing project." This federal action spurred changes in some State laws. However, we have no complete list of these actions.

The source for the data in connection with question 1-4 is the Appropriations testimony of the Secretary of HUD, May, 1973.

I hope that this information is helpful to you.

Sincerely,

Mary K. Nenno
Director, Policy and Research

MKN:aw

APPENDIX D

Excerpts from PRINTED RECORD in Court Below (Finding)

FOURTH: The plaintiff made the following claims of law respecting the judgment to be rendered, upon which the Court ruled as hereinafter stated.

95. Polly Moorer is duly appointed, qualified and acting Commissioner of the Housing Authority with the full and unrestricted rights and powers of that office despite the fact she is a tenant of the Housing Authority of which she is commissioner.

96. Joseph R. Peters is duly appointed, qualified and acting Commissioner of the Housing Authority with the full and unrestricted rights and powers of that office despite the fact he is a tenant of the Housing Authority of which he is a commissioner.

97. Polly Moorer and Joseph R. Peters have the right under the Constitution and laws of the United States and of the State of Connecticut to be Commissioners of the Housing Authority, in which they are tenants, as any other eligible persons who are not tenants.

98. The Housing Authority has the same right, as any housing authority, none of whose commissioners is a tenant of such authority, under the Constitution and Laws of the United States and of the State of Connecticut to:

(a) continue its day to day operation of moderate rental and low income housing projects and other activities and services in accordance with the laws of the United States and the State of Connecticut;

(b) plan and develop the construction and financing of said projects, activities and services;

(c) issue and sell its bonds or notes for the aforesaid purposes;

(d) enter into valid contracts;

(e) submit valid applications for grants, loans and advances, and validly enter into agreements for grants, loans and advances, for said purposes from the State of Connecticut and the Federal Government and their respective officials, agencies and departments.

99. A tenant of the Housing Authority may be a commissioner of the Housing Authority, with the full and unrestricted rights and powers of that office, if duly appointed by the appointing authority, and if otherwise eligible.

100. A tenant of a housing authority in Connecticut may be a commissioner of that housing authority, with the full and unrestricted rights and powers of that office, if duly appointed by the appointing authority, if otherwise eligible.

101. Under Section 8-56 of the Connecticut General Statutes, every authority is authorized to "do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation, of any housing project by such authority."

102. Under Section 8-41 of the Connecticut General Statutes there is no prohibition against a tenant of a housing authority being a commissioner of that same housing authority.

103. Section 515 of Part Two of the Annual Contributions Contract between the Housing Authority of the City of New Haven and the United States of America does not prohibit a tenant of a housing authority from being a commissioner of that same housing authority.

104. Section 8-42 of the Connecticut General Statutes does not prohibit a tenant of a housing authority from being a commissioner of that same housing authority.

105. 42 U.S.C. Sec. 1401 prohibits a person from being barred from serving as a commissioner of a local public housing authority because of his tenancy in that housing authority.

106. The Circulars of HUD (RHM 7401.1 dated 7/14/70 and 1/28/71) follow the federal policy stated in 42 U.S.C. Section 1401 and direct local housing authorities to follow that policy.

107. The Supremacy Clause of the Federal Constitution, Article VI, Clause 2, requires that policy stated in 42 U.S.C. Section 1401 be followed by each local housing authority, including the plaintiff Housing Authority.

108. If any law of Connecticut forbids a tenant of a housing authority from being a commissioner of that same housing authority, that law must give way to the federal policy stated at 42 U.S.C. Section 1401 and be declared null and void by virtue of the Supremacy Clause of the Federal Constitution.

109. Under the provisions of the Fourteenth Amendment to the Federal Constitution relating to privileges and immunities, equal protection and due process, a tenant of a housing authority has the right to be a commissioner of that same housing authority. Notwithstanding said claims the Court rendered judgment as on file."

APPENDIX E

Provisions of the Constitution of the United States Which the Case Involves

1. ARTICLE VI, Clause 2

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

---

2. FOURTEENTH AMENDMENT

> Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
SEP 12 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS, *Petitioners*

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLPH G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven, *Respondents*

AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

FLORENCE WAGMAN ROISMAN
1601 Connecticut Avenue, N.W.
Suite 780
Washington, D. C. 20009
Counsel for Amicus Curiae

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS, *Petitioners*

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLPH G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven, *Respondents*

On Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut

---

BRIEF FOR THE NATIONAL TENANTS ORGANIZATION AS AMICUS CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Pursuant to the written consent of the parties, filed with the Clerk of this Court in accordance with Rule 42(1), the above named organization respectfully submits this brief as *amicus curiae* in support of the

petition for a writ of certiorari to the Supreme Court of the State of Connecticut.

INTEREST OF AMICUS

Amicus National Tenants Organization (hereinafter NTO) is a non-profit corporation whose members include tenants of low-rent public housing projects throughout the nation and local organizations of such tenants. It currently has 350 affiliate organizations in 24 states plus the District of Columbia, Puerto Rico, the Virgin Islands and Canada, with a nationwide membership conservatively estimated at 300,000 tenants. NTO's stated purpose is to promote the legal, political and economic rights of poor tenants in the United States. In furtherance of its stated purpose, NTO respectfully urges that this Court grant the requested writ and decide whether tenants may serve as commissioners of local public housing authorities. Issuance of the writ and a later decision on the merits in the petitioners' favor will result in local public housing authorities' being more attuned to the needs, difficulties and frustrations faced by the poor residing in federally assisted public housing.

NTO respectfully urges this Court to grant the petition for the writ of certiorari and to decide, for the first time, whether a tenant of a federally assisted public housing project may be deprived of the opportunity to serve as a commissioner of the local public housing authority solely because of his or her status as a tenant.

Amicus is confident that the petitioners and respondents will argue the significant constitutional issues of federal preemption, equal protection and due process raised by this case. Accordingly, amicus will not re-

argue these issues but will, instead, merely attempt to demonstrate the significant policy questions raised by the decisions of the Connecticut courts and will indicate the danger those decisions pose to the continued viability of public housing programs.

ARGUMENT

I

The Writ Should Be Granted Because the Case Raises Questions of Nationwide Importance Which Have Not Yet Been Decided by This Court.

For the first time in its history, this Court has been asked to consider a state court's decision that it is illegal for tenants to serve as commissioners of their local housing authorities, despite an Act of Congress stating that:

> [i]t is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low rent housing project. [42 U.S.C. § 1401.]

This Court should now decide whether public tenants as a class may or may not sit on local commissions, or whether, in light of the varying state policies on this question, the constitutional rights of tenants may be subjected to the vagaries of political boundaries.

Local housing authorities are authorized in each state of the union. The overwhelming majority of state legislation does not address the issue of tenant commissioners. Moreover, in 39 states neither the legislature nor the courts nor the executive has spoken to the issue raised by this case. Thus the status of tenant-commissioners is currently undecided in most

states, and the constitutional rights of tenants are subject to the varying social, political and legal climates in each jurisdiction.

Amicus does not contend that tenants must be appointed to commissions, but only that they not be precluded from serving solely because of their status as tenants. Accordingly, amicus realizes that, to some extent, the question of whether tenants serve as commissioners will vary from jurisdiction to jurisdiction. Amicus does contend, however, that tenants may not be prohibited by law from serving as commissioners in one state while tenants in another state may serve. The low-rent public housing program is a nationwide program, authorized and financed in part by the federal government. In such a situation, it is totally inappropriate for individual states to deprive tenants of the opportunity to serve as local commissioners, an opportunity which the federal government, speaking through Congress, deemed it wise to offer. If only to insure a uniform national policy for residents of federally subsidized housing projects, this Court should issue the writ and decide the issue on its merits.

The widespread importance of this case is emphasized by the number of affected bodies. In Connecticut alone there are 29 local housing authorities which operate 22,110 housing units. Throughout the nation, the Department of Housing and Urban Development estimates there are 2,793 local housing authorities operating 1,607,584 units which house approximately 3.3 million tenants. *See* Department of Housing and Urban Development, "Local Authorities Participating in Low-Rent Housing Programs," Report S-102 at VI, 45 (1972). An issue affecting the most fundamental

element in the lives of more than three million persons—their shelter—surely is one that warrants this Court's exercise of sound judicial discretion to grant the petition.

II

The Exclusion of Tenants from Housing Authority Commissions Is Detrimental to Tenants, to the Commissions and Their Programs, and to the Public Generally.

Public housing programs have, by most accounts, failed to meet their twin goals of eliminating slums and providing decent, safe and sanitary shelter for the poor. *See, e.g.,* Friedman, "Public Housing and the Poor: An Overview," 54 Calif. L. Rev. 642 (1966). This is amply demonstrated by the recently announced demolition of the Pruitt-Igoe Project in St. Louis, a 57-acre site containing 33 11-story buildings which, when built almost 20 years ago, was hailed as the new hope for public housing. The reasons for this failure are undoubtedly complex and varied, but among them is the dissatisfaction of tenants with their surroundings. Until recently, public housing projects were large, impersonal buildings designed with little regard for the likes and dislikes of the occupants. To a great degree, the fault for poorly planned public housing developments lies with those most responsible for the shape and form of public housing in the local community—the local housing authority commissioners.

By statute, regulation and custom, the responsibilities of housing authority commissioners are extensive. For example, 42 U.S.C. § 1401 states that:

> [i]t is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of

> the low rent housing program, including responsibility for the establishment of rents and eligibility requirements. . . .

Decisions made by local commissioners affect every aspect of the public housing program and are of critical importance. Commissioners decide whether to have a program at all, how large a program to have, where to build units, how to select tenants, what rent to set, what rules to promulgate and enforce, and whom to hire to administer the program and individual projects. *See, e.g.,* Abrams, *The Future of Housing*, 282 (1946). As the difficulties of public housing demonstrate, the decisions made by the commissioners have frequently been wrong.

Moreover, the decisions have been wrong precisely because commissioners do not understand and are out of touch with the wants and needs of their constituents, public housing tenants. Any tenant who had lived in a large, impersonal highrise project could have told commissioners that such projects breed crime, vandalism, insecurity and dissatisfaction. Under present circumstances, however, there is little direct contact between commissioners and tenants. The result is that local housing authorities often make decisions directly affecting tenant life without meaningful tenant input. Permitting tenants to serve as commissioners would provide effective tenant input into policy making decisions and could well avoid the errors made by non-tenant commissioners.

Public housing has been plagued with tenant neglect of units, which, to a significant degree, is a result of tenant attitudes toward the project and from their belief that their apartments are not their property. This,

in turn, is caused by the uncertainty of tenant tenure in low-rent projects, in which they believe they have no stake. Violation of a laundry-list of rules, enacted by the commissioners and enforced by their employees, the project managers, may result in tenant eviction. Only recently has this Court held that tenants must be given reasons for their eviction. *Thorpe* v. *Housing Authority of the City of Durham,* 386 U.S. 670 (1967).

Tenant perceptions of their uncertain tenure are reinforced by the use of their short-term leases in public housing. The overwhelming majority of housing authorities refuse to grant tenants a lease for a term longer than month-to-month. Friedman, "Public Housing and the Poor: An Overview," *supra,* at 660. It would be surprising if tenant commissioners would fail to warn non-tenant commissioners of the resentment generated by short-term leases. It would also be surprising if, after granting longer-term leases, tenant neglect did not decrease to some degree. Whether tenant neglect decreases with the use of longer-term leases is not, however, the salient point. The salient point is that public housing tenants, alone among other classes of tenants, are almost exclusively subject to the uncertainty of month-to-month tenancy, a situation which might well not have occurred if tenants were not deprived of their right to serve as housing authority commissioners.

In short, one of the major problems of public housing programs as now constituted is that "local housing authorities themselves . . . have been a principal hindrance of progress." Hartman and Carr, "Housing Authorities Reconsidered," 35 Journal of the American Institute of Planners, 10, 11 (1969). Local hous-

ing authorities are a "hindrance" not because they wish to be but because they too often are unable to understand tenants' problems. They do not understand these problems because (1) they have little or no contact with individual tenants, (2) few commissioners have ever lived in public housing, and (3) the racial, class and income makeup of commissioners differs from that of their tenants.

Modern public housing tenants, unlike their predecessors during the 1930s and 1940s, are likely to be black and poor. Yet, although 55 percent of public housing tenants are black, only six percent of housing authority commissioners are. Hartman and Carr, *supra,* at 12. Housing authority commissioners are overwhelmingly male; yet fully 26 percent of public housing familes are headed by a female. *Id.* The income differential between commissioners and tenants is just as disparate. The median yearly income for public housing tenants in 1965 was $3,132, while the median for commissioners was $11,700, including 53 percent whose incomes exceeded $20,000 per year. *Id.* Most importantly, only three percent of housing authority commissioners questioned had ever lived in public housing. Not one of the commissioners surveyed currently resided at a public housing project. *Id.*

These marked differences in background between tenants and commissioners affect commissioners' attitudes toward tenants. Commissioners tend to perceive their constituents as lazy, shiftless and lacking initiative. Hartman and Carr, *supra,* at 16. Whether commissioners with a largely negative attitude toward tenants adequately respond to tenant grievances is a doubtful proposition. If, however, tenants serve as commissioners, it is highly probable that the prej-

udices of commissioners toward tenants will dissipate, as irrational prejudices often do when interpersonal contacts are initiated. As a consequence, commissioners will tend to give more credence to tenant grievances, which will, in turn, result in contented tenants' taking more pride in their residences. Unhappiness within public housing projects is a luxury which neither tenants nor local housing authorities can afford.

CONCLUSION

In the face of public housing's myriad problems, it is safe to say that local housing authorities may not be able to exist much longer without significant and rapid increase in tenant participation in management decisions. Amicus wholeheartedly agrees with Professor Friedman in stating that:

> ways should be sought to make tenants feel more of a stake in a place which, after all and despite its defects, is their home and which is in theory run for their benefit, not the benefit of the government. [Friedman, "Public Housing and the Poor: An Overview," 54 Calif. L. Rev. 642, 668 (1966).]

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

FLORENCE WAGMAN ROISMAN*
1601 Connecticut Avenue, N.W.
Suite 780
Washington, D. C. 20009
Counsel for Amicus Curiae

---

* Counsel wishes to acknowledge the important contribution of Neil M. Soltman in the preparation of this brief.

SUPREME COURT, U. S.
T 11 1973

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLF G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

Motion of Connecticut State Conference of the National Association for the Advancement of Colored People and of the New Haven Branch of the National Association for the Advancement of Colored People for leave to file Brief as Amici Curiae

LEDGE PRESS, PRINTERS, HARTFORD

Pursuant to Rule 42(3) of the Supreme Court Rules, the Connecticut State Conference of the National Association for the Advancement of Colored People (hereinafter referred to as "State Conference NAACP") and the New Haven Branch of the National Association for the Advancement of Colored People (hereinafter referred to as "New Haven NAACP") respectfully move this Court for leave to file the accompanying brief in this case as *amici curiae*.

The consent of the attorneys for the petitioners herein has been obtained, but the attorney for the respondents, Dorsey, Berdon, Carlson and Agostinelli, has refused to consent to the filing of a brief by the State Conference NAACP and the New Haven NAACP as *amici curiae*. The Assistant Attorney General for the State of Connecticut representing the respondents, Dorsey, Berdon, Carlson and Agostinelli, has advised counsel for the State Conference NAACP and the New Haven NAACP that he would not consent to the filing of a brief as *amici curiae* at this stage.

On August 1, 1973, by means of a letter directed to the Clerk of this Court, the office of the Attorney General of the State of Connecticut consented to the filing of a brief as *amicus curiae* on behalf of the National Tenants Organization supporting the petition for a writ of certiorari herein, which brief has been filed with the Court as of the date hereof.

On July 10, 1973, by a letter from the office of the Attorney General of the State of Connecticut, the Clerk of this Court was advised that, pursuant to Rule 24(3) of the Supreme Court Rules, the Attorney General waived the right to file a brief in opposition to the petition for a writ of certiorari herein.

On September 10, 1973, the Attorney General of the State of Connecticut was advised by a letter from the Clerk of this Court that the Court would require the Attorney

General to file a brief in opposition to the petition for certiorari herein, said brief in opposition to be filed by October 11, 1973.

The applicants, The State Conference NAACP and The New Haven NAACP, are concerned with improving the political, educational, social and economic status of minority groups, with eliminating racial prejudice, with keeping the public aware of the adverse effects of racial discrimination and with taking all lawful action to secure the elimination of racial discrimination. They have an interest in this case in that it involves an attempt by the New Haven Housing Authority and by two black tenants of public housing in New Haven, acting on behalf of all other minority people similarly situated, to secure a voice for tenants of public housing in the management and operation of public housing. A large majority of public housing tenants in New Haven are black, Spanish or other minority peoples. Petitioners Polly Moorer and Joseph R. Peters are black. They were duly appointed commissioners of the petitioner Housing Authority. The action of the respondents disallowing them from continuing to serve as housing authority commissioners and disallowing any public housing tenant from so serving constitutes an illegal and arbitrary deprivation of their rights as citizens to be considered for public office and an unconstitutional discrimination against the petitioners individually and against all other persons similarly situated.

The brief of the petitioners herein in the Supreme Court for the State of Connecticut argues that the federal law and the federal policy prohibit the barring of a person from serving as a commissioner of a local public housing authority because of his tenancy in that housing authority and the Supremacy Clause of the Federal Constitution renders null and void any state statute which forbids a tenant of a housing authority from being a commissioner thereof due to the fact

of federal legislation expressly permitting such commissionerships. In addition, petitioners' brief argues that the Fourteenth Amendment to the Federal Constitution, as it relates to privileges and immunities, equal protection and due process, protects the right of a tenant of a public housing authority to be a commissioner thereof. However, the discussion in petitioners' brief of the Fourteenth Amendment and federal preemption points is not adequate, especially when considered in the light of the actual make-up of the population of the public housing authority tenancies and the positions taken in other states with large numbers of minority group tenants in public housing and applicants believe that these arguments must be expanded and made more complete from their vantage point in this Court. If these arguments are approved by this Court, applicants are confident the decisions of the courts below must be reversed.

WILLIAM BRUCE LOUDEN
JOHN ROSE, JR.
RICHARD W. TOMC

799 Main Street
Hartford, Connecticut 06103

Counsel for Amici Curiae

SUPREME COURT, U. S.

OCT 11 1973

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLPH G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven,

Respondents.

AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT.

WILLIAM BRUCE LOUDEN
JOHN ROSE, JR.
RICHARD W. TOMC

799 Main Street
Hartford, Connecticut 06103

Counsel For Amici Curiae

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLPH G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut.

BRIEF FOR CONNECTICUT STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND OF THE NEW HAVEN BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

Pursuant to rule 42(3) of the Supreme Court Rules, the Connecticut State Conference of the National Association for the Advancement of Colored People and the New Haven Branch of the National Association for the Advancement of Colored People respectfully submit this brief as *amici curiae* in support of the petition for a writ of certiorari to the Supreme Court of the State of Connecticut

I.

ARGUMENT

Connecticut General Statutes Section 8-42, as that Statute has been applied by the Court below, contradicts the Legislative Purpose set forth in 42 U.S.C. Section 1401, and therefore must fall under the Supremacy Clause of the Federal Constitution.

Amici contend that in this case there is a conflict between federal law, 14 U.S.C. Section 1401, and state law, Connecticut General Statutes Section 8-42, and that by the operation of the Supremacy Clause of the Federal Constitution, the state statute must fall. Deciding whether a statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. *Perez* v. *Campbell*, 402 U.S. 637, 644 (1971).

A. Congress' Purpose in Amending 42 U.S.C. Section 1401 was to Eliminate the Restrictions Preventing Tenants of Public Housing from Holding Office as Commissioners of a Local Public Housing Agency.

Congress has stated that "It is the sense of the Congress that no person should be barred from serving on the board of directors or a similar governing body of a local public housing agency because of his tenancy in a low rent housing project". 42 U.S.C. Section 1401. The disputed language was added to Section 1401 by The Housing and Urban Development Act of 1970, December 31, 1970, P.L. 91-609, Title II, Section 211, 84 Stat. 1779. Title II of the Act, which provides for additional federal contributions to local public housing agencies, was enacted:

> ". . . to provide local housing authorities with additional resources, not available to them from existing revenue sources, to improve immediately their fiscal situation and the deteriorated condition of their properties, while at the same time strengthening their administration and management functions, *including activities designed to achieve maximum tenant participation and responsibility,* so that they can become fully effective operations." Conf. Rep. No. 91-1784, 91st Cong., 2d Sess., December 17, 1970; Cong. Record Vol. 116 (1970). (Emphasis added).

In interpreting the effect of 42 U.S.C. Section 1401 on Connecticut General Statutes Section 8-42, the court below construed Congress' use of the word "should" as permitting the state to bar public housing tenants from holding the office of commissioner of a local housing agency: "The addition of the sense of Congress to Section 1401 . . . (did not) impose any mandatory requirement." *Housing Authority of the City of New Haven, et al* v. *Donald T. Dorsey, Commissioner, Department of Community Affairs, et al.,* 34 Conn. L. J. No. 31, p. 1., at p. 4. January 30, 1973.

Amici respectfully submit that the ruling of the court below has the effect of ascribing to Congress a wholly frivolous intent, and it deprives the new language, albeit subjunctive, of any operative result. An Act of Congress should be interpreted and enforced according to its legislative purpose rather than by subtle verbal distinctions. *Pennsylvania Railroad Company* v. *Rychlik,* 352 U.S. 480, 488 (1957), *Vermilya-Brown Co., Inc.* v. *Connell,* 335 U.S. 377, 386 (1948); *Rhodes* v. *Iowa,* 170 U.S. 412, 421-422 (1898). Where the meaning of words in a statute will lead to an unreasonable result plainly at variance with the policy of legislation as a whole, the Court will follow the purpose of the statute, rather than its literal words. *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235, 250 (1970); *Lawson* v. *Suwannee Fruit & Steam-*

ship Co., 336 U.S. 198, 201 (1949); *United States* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 543 (1940); *Fleischmann Construction Company* v. *United States To The Use of Forsberg*, 270 U.S. 349, 360 (1926).

B. Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court Below, Must Fall as a Matter of Federal Supremacy Because It Frustrates a Congressional Purpose and Impairs the Efficiency of the Federal Agency Charged with Effectuating that Purpose.

In questions of conflict between federal and state law, this Court's primary function is to determine under the circumstances of a particular case whether the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Hines* v. *Davidowitz*, 312 U.S. 52, 67-68 (1941). Congress' purpose in amending 42 U.S.C. Section 1401 was to eliminate the barriers precluding public housing tenants from serving as commissioners of local public housing agencies. *Conf. Rep.*, supra. Connecticut General Statutes Section 8-42, as that statute has been interpreted by the court below, *Housing Authority of the City of New Haven*, supra, precludes public housing tenants from holding the office of commissioner of a local public housing agency. A conflict between federal and state law, even where the state law is otherwise valid, *Hamm* v. *City of Rock Hill*, 379 U.S. 306, 311-312 (1964), and not intended to frustrate a federal purpose, *Perez* v. *Campbell*, 402 U.S. 637, 651-652 (1971), is resolved as a matter of federal supremacy. *Franklin National Bank* v. *New York*, 347 U.S. 373, 378-379 (1954).

Connecticut General Statutes Section 8-42, as that statute has been applied by the court below, also conflicts with

the policy objectives of the federal agency charged with executing federal housing laws:

> "The Department of Housing and Urban Development wishes to re-emphasize its strong commitment to the practice of appointing tenants to the Boards of Commissioners of Local Housing Authorities . . . The declaration of the Congress in Section 211 complements the previously expressed policy of the Department." U.S. Department of Housing and Urban Development, Renewal and Housing Management Circular 7401.1, January 28, 1971.

A state law cannot stand when it impairs the efficiency of federal agencies charged with effectuating a Congressional purpose. *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969) *King* v. *Smith*, 392 U.S. 309 (1968); *Nash* v. *Florida Industrial Commission*, 389 U.S. 235 (1967).

II.

The Exclusion of Tenants From the Board of Commissioners of the Housing Authority Constitutes Denial of Equal Protection of the Laws Guaranteed by the Fourteenth Amendment of the Federal Constitution.

Connecticut General Statutes Section 8-42, as that statute has been applied by the Connecticut Supreme Court in the case below, *Housing Authority of the City of New Haven*, supra, precludes tenants of public housing from being considered for the office of Housing Authority Commissioner *by the fact of their tenancy* in such housing. Amici contend that the state statute as applied by the court below constitutes a denial of equal protection of the laws guaranteed by the Fourteenth Amendment of the Federal Constitution. In deciding whether a law violates the Equal Protection Clause, this Court looks to the classification in question, the individual

interests affected by the classification, and the governmental interests asserted in support of the classification. *Dunn* v. *Blumstein*, 405 U.S. 330, 335 (1972); *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968).

A. By the Operation of Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court below, Tenants of Public Housing are Deprived of Their Constitutional Right to be Considered for Public Office.

It is established law that a person has a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The state may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees. *Turner* v. *Fouche*, 396 U.S. 346, 362-63 (1970). *Turner* has been applied to public offices which are elective, *Stapleton* v. *Clerk for City of Inkster*, 311 F. Supp. 1187 (1970); *Bolanowski* v. *Raich*, 330 F. Supp. 724 (1971); *Connerton* v. *Oliver*, 333 F. Supp. 201 (1971); *Socialist Workers Party* v. *Welch*, 334 F. Supp. 179 (1971); *Green* v. *McKeon*, 335 F. Supp. 630 (1971); *Mogk* v. *City of Detroit*, 335 F. Supp. 698 (1971) *Wellford* v. *Battaglia*, 343 F. Supp. 143 (1972), as well as appointive. *Rodriguez* v. *Brown*, 437 F.2d 34 (1971); *Educational Equality League* v. *Tate*, 472 F.2d 612 (1973). *Rodriguez* involved the selection of grand jurors; *Educational Equality League* dealt with appointments to a panel which nominated members to a city school board; *Turner* itself involved the selection of grand jurors who, in turn, appointed members of a school board. Amici contend that *Turner* applies no less to the appointment of public housing commissioners than to the selection of school board members or grand jurors.

B. The Classification Used by Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court Below, is Inherently Suspect and Works an Invidious Disqualification of the Petitioners and Persons Similarly Situated From the Exercise of Their Constitutional Right and Fundamental Interest as Citizens to be considered for Public Office.

The effect of Connecticut General Statutes Section 8-42, if not the design, is to preclude persons from holding the office of housing commissioner on the basis of poverty or race. Tenants of public housing are by definition poor. *James* v. *Valtierra*, 402 U.S. 137, 144 (1971) (Dissent); *cf.* 42 U.S.C. Sections 1402 (1) and (2). Poverty is a constitutionally disfavored classification. *Bullock* v. *Carter*, 405 U.S. 134, 144 (1972); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 668 (1966); *McDonald* v. *Board of Election Commissioners of Chicago*, 394 U.S. 802, 807 (1969); *Williams* v. *Illinois*, 399 U.S. 235, 241 (1970); *Douglas* v. *California*, 372 U.S. 353, 355 (1963) *Griffin* v. *Illinois*, 351 U.S. 12, 17 (1956).

Both individual Petitioners in this action are black. Most tenants of the public housing administered by the New Haven Housing Authority are members of racial minority groups. Legislative drafting which carefully avoids express racial classifications will nevertheless fail if in fact the law's impact falls most heavily on racial minorities. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886); *Anderson* v. *Martin*, 375 U.S. 399 (1964); *Reitman* v. *Mulkey*, 387 U.S. 369 (1967). Racial classifications are constitutionally suspect, *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954), and subject to the most rigid judicial scrutiny. *Hunter* v. *Erickson*, 393 U.S. 385, 392 (1969); *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944). They bear a far heavier burden of justification than other classifications. *McLaughlin* v. *Florida*, 379 U.S. 184, 194 (1964).

This Court will use exacting scrutiny in assessing classifications which affect fundamental interests of citizens.

Skinner v. *Oklahoma ex rel. Williamson*, 316, U.S. 535 (1942); *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). Interests which have been found fundamental are, *inter alia*, the right to travel, *Shapiro* v. *Thompson*, supra; the right to vote, *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966); the right to political allegiance, *Williams* v. *Rhodes*, 393 U.S. 23 (1968); the right to procreation, *Skinner* v. *Oklahoma ex rel. Williamson*, supra; rights with respect to criminal procedure, *Griffin* v. *Illinois*, 351 U.S. 12 (1956); and education, *Brown* v. *Board of Education*, 347 U.S. 483 (1953). Amici respectfully submit that the right to be considered for public office without the burden of invidiously discriminatory disqualification is no less basic than other interests which this Court has held to be fundamental.

C. Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court Below, Evinces No Compelling State Interest Significant Enough to Override the Constitutional Right and Fundamental Interest of the Tenants of Public Housing to be Considered as Commissioners of Housing Authorities.

This Court has recognized that states may not casually deprive a class of individuals of constitutional liberties because of some remote administrative benefit to the state. *Carrington* v. *Rash*, 380 U.S. 89, 96 (1965); *Dunn* v. *Blumstein*, 405 U.S. 330, 351 (1972). Where the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective, the state requirement must fall. *Bullock* v. *Carter*, 405 U.S. 134, 146 (1972); *Turner* v. *Fouche*, 396 U.S. 346, 362 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 425-426 (1961); *Kotch* v. *River Port Pilot Commissioners*, 330 U.S. 552, 556 (1947).

The court below grounded its decision on the theory of conflict of interest: ". . . a person cannot serve himself as both landlord and tenant"; *Housing Authority of the City of New*

Haven, supra, at p. 2; and the appearance of impropriety: "Anything which tends to weaken public confidence and to undermine the sense of security for individual rights is against public policy." Id., at p. 3.

Amici contend that whatever conflict of interest could arise when a person occupies both the status of public housing tenant and public housing commissioner is narrowly circumscribed. First, the vote of a commissioner who is a tenant is counterbalanced by the votes of commissioners who are not tenants. Connecticut General Statutes Section 8-41. Even in a situation where tenant-commissioners outnumber non-tenant commissioners in attendance at a commission meeting, Connecticut General Statutes Section 8-41 permits the housing authority to amend its by-laws to require a larger quorum. Second, a commissioner may be removed from office for "inefficiency, neglect of duty or misconduct in office." Connecticut General Statutes Section 8-43. Third, the state has it within its power to prescribe a less burdensome method of preventing those remote cases of self-dealing than to preclude altogether the exercise of the federal constitutional right to be considered for public office. The state, for instance, may establish procedures whereby a tenant-commissioner must disqualify himself from any commission considerations of policies which directly affect his tenancy. In an analogous situation, Connecticut employs a statutory scheme for disqualifying a member of a zoning board from considering issues in which "he is directly or indirectly interested in a personal or financial sense." Connecticut General Statutes Section 8-11. Moreover, it is to be noted that other states either by statute, opinions of Attorneys General or established practice, expressly permit tenants to serve on local housing authorities without apparent problems of self-dealing or the appearance of inappropriate conduct. *Cf.* Petitioners' Brief, p. 20.

Amici respectfully submit that Connecticut has no compelling state interest which justifies depriving public housing tenants of their constitutional right to be considered for the office of housing authority commissioner.

For the reasons stated herein, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

WILLIAM BRUCE LOUDEN
JOHN ROSE, JR.
RICHARD W. TOMC

799 Main Street
Hartford, Connecticut 06103

Counsel for Amici Curiae

LIBRARY
SUPREME COURT, U. S.

FILED
OCT 26 1973
MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE STATE OF CONNECTICUT; ROBERT I. BERDON, TREASURER OF THE STATE OF CONNECTICUT; ADOLF G. CARLSON, COMMISSIONER OF FINANCE AND CONTROL OF THE STATE OF CONNECTICUT; NATHAN G. AGOSTINELLI, COMPTROLLER OF THE STATE OF CONNECTICUT; and BARTHOLOMEW GUIDA, MAYOR OF THE CITY OF NEW HAVEN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF FOR STATE RESPONDENTS IN OPPOSITION

ROBERT K. KILLIAN
Attorney General

JOHN K. JEPSON
Assistant Attorney General
1179 Main Street
Hartford, Connecticut 06115

Counsel for State Respondents

October 17, 1973

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, COMMISSIONER OF THE DEPARTMENT OF COMMUNITY AFFAIRS OF THE STATE OF CONNECTICUT; ROBERT I. BERDON, TREASURER OF THE STATE OF CONNECTICUT; ADOLF G. CARLSON, COMMISSIONER OF FINANCE AND CONTROL OF THE STATE OF CONNECTICUT; NATHAN G. AGOSTINELLI, COMPTROLLER OF THE STATE OF CONNECTICUT; and BARTHOLOMEW GUIDA, MAYOR OF THE CITY OF NEW HAVEN,

Respondents,

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Connecticut

BRIEF FOR STATE RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED

1. Whether a tenant of a municipal housing authority established by a municipality pursuant to state law has a federal right to be eligible to serve as a housing authority commissioner contrary to state statutory and common law regarding conflicts of interest.

2. Whether a tenant of a municipal housing authority which may operate solely on local funds or on a combination of local and state funds acquires eligibility to serve as a commissioner contrary to state law if the housing authority receives some federal subsidies.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Constitutional provisions:

It is respectfully suggested that no constitutional provisions are involved despite petitioners' claims regarding the Supremacy Clause (Article VI, Clause 2) and the Fourteenth Amendment to the Constitution of the United States.

B. Statutory provisions:

The respondents are generally satisfied with the provisions set forth by the petitioners. Additionally, respondents set forth in their Appendices U.S. Department of Housing and Urban Development Circular RHM 7401.1, dated July 14, 1970 and Circular RHM 7401.1, dated January 28, 1971. (App. A and B)

STATEMENT OF THE CASE

The respondents while generally satisfied with the petitioners' Statement of the Case desire to add a few remarks.

The record contains no evidence of any tenant commissioners in Connecticut since late 1971 following the expiration of one tenant's term and a successor's appointment (R. p. 23) and the resignation of the other tenant commissioner (R. pp. 22, 23). It is nearly two years since tenants have served as commissioners in Connecticut.

All Connecticut public housing authorities, tenants thereof, municipal executive officers, town governing bodies and taxpayers were given notice of and an opportunity to participate in this case pursuant to Connecticut's declaratory judgment law (R. p. 31). Despite petitioners' claim of the great interest and importance of this matter, not one person other than the plaintiffs and named defendants appeared nor did anyone serve as amicus curiae.

The Record does not indicate that the Federal government, acting by the U.S. Department of Housing and Urban Development (HUD) or otherwise, was given any notice or opportunity to participate even though its Circular RHM 7401.1, dated January 28, 1971 states in part:

> "c. All local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners." (R. p. 24).

Petitioners' position, contrary to the above federal position, claims that federal law, constitutional and statutory, *requires* that tenants be eligible to serve as commissioners of their own authorities. (R. pp. 35, 36)

REASONS FOR DENYING THE WRIT

I.

THE CASE DOES NOT WARRANT REVIEW.

The state respondents by letter dated June 10, 1973 waived their right to oppose the petition for writ of certiorari believing that the petition lacks merit in that the case clearly does not warrant review. The petition might have been viewed differently if the federal government's position had been to require tenant eligibility rather than to merely encourage it. The petition might have been viewed differently if federal subsidy contracts were jeopardized even though many housing authorities operate on local and state funds alone. The plain fact is, however, that the federal government does not *require* tenant eligibility and tenant eligibility does not affect subsidy contracts. Thus it should be no surprise that the matter has not been presented to the Court before.

Petitioners indicate by letter in their Appendix C that as of June 1972 there were approximately 3300 local housing authorities in the country. Assuming petitioners figures are accurate — they were never presented to the Connecticut Courts — one is given an insight into the limited scope of petitioners alleged problem. Under date of August 27, 1973 the "HUD Newsletter" indicated that more than 80 local housing authorities have tenants on their boards of commissioners, approximately 2.5%. Even if those authorities are divided by the number of housing authorities having units under management, 2460 the figure is less than 3.5%. It is interesting to note that the number of housing authorities having tenant commissioners is fairly stable, for the "HUD Newsletter" of November

27, 1972 indicates that 86 local housing authorities had tenant representatives; whereas in 1970 the figure was 43.

It is recognized that the several states view the question differently, if it has been considered at all. At the time this question was being considered in Connecticut, a number of states provided information. Most indicated the question had not been considered or ruled upon. Indiana provided a copy of a statute specifically precluding tenant commissioners. (App. C). New York advised that a tenant under lease may be appointed and serve but could not renew his lease. (App. D). New York subsequently amended its law to allow tenants to serve as commissioners but restricted such service to not more than one tenant at a time per authority. (It may be noted Connecticut housing authority tenancies are frequently on a month to month basis involving constant renewals of tenancy.) North Carolina provided a copy of an opinion prohibiting a tenant from serving as a commissioner. (App. E). Respondents again emphasize, however, that different state approaches are not consistent with any existing federal requirement.

II.

A RULING AS TO 42 U.S.C. §1401 IS UNNECESSARY.

Petitioners strongly indicate that Federal law and regulation not only authorize but in fact require that tenants be eligible to serve as commissioners on local housing authorities. Petitioners have been unable, however, to produce any evidence in support of this claim. In fact the Petitioners' evidence demonstrated that local policies and laws controlled.

HUD Circular RHM 7401.1 dated 1-28-71 (App. B) for example clearly shows that local law and policy controls. (R. p. 24; Find. Par. 18) Section 2c of the Circular states:

> All Local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners.

In accordance with the HUD suggestion bills were introduced in the 1969, 1971, and 1972 Sessions of the Connecticut General Assembly which would have specifically authorized tenants to serve as commissioners. None has become law. Bill No. 7119, File No. 1381, 1969 Regular Session; Public Act 349, 1971 Regular Session and Veto message June 7, 1971 (Defendant Exhibit No. 1 and 2); Bill No. 272, File No. 243, 1972 Regular Session.

Petitioners rely heavily upon Title 42 USCA Section 1401 entitled Declaration of Policy. The section generally discusses the need to alleviate unemployment, to remedy unsafe and unsanitary housing and the acute shortage of low income housing, to make adequate provisions for larger families and elderly persons and "to vest in the local public housing agencies the maximum amount of responsibility . . ." The addition of the sense of Congress tenant commissioner sentence to Section 1401 on December 31, 1970, did not eliminate the above quoted policy nor did it impose any mandatory requirement. (R. p. 24, 33; Find. Par. 19, 86, 91)

The reading of HUD Circular 7401.1 dated 7-14-70, HUD Circular dated 1-28-71 and 42 USCA §1401 as amended December 31, 1971, Pub. L 91-609 demonstrates that the federal government is not opposed to having tenants serve as commissioners and in fact encourages such service. These items also make clear the fact that state law and local policy control and that the federal government clearly recognizes this fact.

One can readily understand Congress' unwillingness to dictate the makeup of each local housing authority in each of the fifty states — Connecticut alone has seventy-six housing authorities. So also such an approach would contradict the expressed Congressional policy of maximum local responsibility and in addition would raise some interesting constitutional questions with respect to federal-state relations.

The federal government has suggested that tenants be allowed to serve as commissioners — it has not, however, required that they be able to serve. It has not made tenant eligibility to serve as commissioners a prerequisite to the receipt of federal monies. The Petitioner, New Haven Housing Authority and the Respondent, City of New Haven, have clearly recognized this as the tenant commissioners Moorer and Peters are no longer serving and the other

commissioners are not tenants. (R. pp. 22, 23; Find. Par. 9, 11, 13, 14, 15, 16).

III.

THE SEVERAL STATES MAY DETERMINE THE EFFECTS OF CONFLICT OF INTEREST.

It is respectfully suggested that uniformity of housing authority composition is not a federal requirement nor a necessary adjunct to receipt of some federal assistance. Many housing authorities operate solely on local or local and state funds. In both instances there would be no reason for federal concern. It would seem that a claim of federal interest could be made only where some form of federal subsidy is provided, but even in that situation 42 U.S.C. § 1401 emphasizes the desirability of maximum local control. Housing authorities, in fact, are established locally based on powers derived from the state, although it is recognized that an initial impetus for the establishment of local housing authorities was derived from federal legislation in the late 1930s. If § 1401 was construed to require tenant eligibility for commissionerships and such service was contrary to State law, housing authorities could find themselves in a very difficult position. Clearly a housing authority operating solely on local funds would be subject to State law. The same would be true with respect to a housing authority operating on local and state funds. The problem would exist where a housing authority sought some federal subsidy for its programs. Possibly tenants would be required to serve or at least tenant eligibility demonstrated. If a housing authority operated on local, state and federal funds, would tenants be eligible in name only or would tenants serve and state funds be withheld? The types of problems above mentioned need not arise under § 1401 or the executive branches' circulars relating to tenant eligibility. Congress and HUD stated desires not requirements.

It should be noted that the Connecticut Courts have ruled against tenants serving not because they are tenants but because of the conflicts of interest involved in such service.

IV.

NO CONSTITUTIONAL RIGHTS ARE DENIED.

It may simply be stated that constitutional rights are not involved in the petitioners' claims. Tenants of private sponsor low income housing are not deprived of any opportunity to serve as commissioners of housing authorities. The Connecticut law only precludes a housing authority tenant from serving as a commissioner of that authority — a tenant serving as his own landlord.

CONCLUSION

It is respectfully suggested that for the above reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

ROBERT K. KILLIAN
Attorney General

JOHN K. JEPSON
Assistant Attorney General
1179 Main Street
Hartford, Connecticut 06115

Counsel for State Respondents

October 17, 1973

APPENDIX A

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
REGIONAL AND HOUSING MANAGEMENT

CIRCULAR

RHM 7431.1

7/14/70

Cancellation Date:

SUBJECT: Appointment of Tenants as Local Housing Authority Commissioners

1. PURPOSE. The Department of Housing and Urban Development wishes to encourage local communities to consider the appointment of tenants as commissioners of Local Housing Authorities to increase tenant participation in the management of low-income housing projects.

2. GENERAL.

a. The rapidly mounting desire by tenants of low-rent public housing to make their voices heard, to share in the decision-making process, and to achieve a feeling of belonging, and the sharp discrepancy between the background, interests, and socio-economic characteristics of present local housing authority commission members and those of the tenants whose welfare they are responsible for serving, argue strongly for local communities to give serious and immediate consideration to providing for tenant representation on the local housing authority's board of commissioners. While, under state law, the basic responsibility for determining local housing authority board composition rests with the responsible local elected officials, the Department believes there is great merit to this approach and hereby commends every community to give this its most serious and sympathetic consideration.

b. It is urged that when a tenant is selected for appointment as a Commissioner, every effort should be made to assure that he is generally acceptable to the tenants. However, there is no substitute for the appointment of thoughtful, intelligent and hard-working individuals to local housing authority boards who understand the many-faceted dimensions of the job and who are totally dedicated to serving the best interests of the program as a whole, including the interests of tenants.

Ltr. 7.C.1

3. WAIVER OF SECTION 515 OF THE ANNUAL CONTRIBUTIONS CONTRACT.

The General Counsel of the Department of Housing and Urban Development has ruled that a tenant serving as a local housing authority commissioner does not create a conflict of interest within the intent of Section 515 of the Annual Contributions Contract. However, if appropriate local housing authority officials have concern on this matter, then this notice constitutes the necessary Department of Housing and Urban Development Waiver of the conflict of interest provision of the ACC to enable tenants to serve as local housing authority commissioners, provided, further, that the tenant shall not participate in any decision affecting his individual interests as distinguished from the interests of tenants as a class.

HUD-Wash., D. C. • U. S. GOVERNMENT PRINTING OFFICE : 1970 O—376/99

APPENDIX B

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
RENEWAL AND HOUSING MANAGEMENT

CIRCULAR

RHM 7401.1

1/28/71

Cancellation Date:

SUBJECT: Appointment of Tenants as Local Housing Authority Commissioners - Section 211 of the Housing and Urban Development Act of 1970

1. PURPOSE. The purpose of this Circular is to supplement RHM 7401.1 and call to the attention of local communities the policy statement concerning the appointment of tenants as Local Housing Authority commissioners contained in Section 211 of the Housing and Urban Development Act of 1970.

2. GENERAL.

   a. Section 211 of the Housing and Urban Development Act of 1970 reads:

      "Section 1 of the United States Housing Act of 1937 is amended by adding at the end thereof the following: 'It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project.'"

   b. The Department of Housing and Urban Development wishes to re-emphasize its strong commitment to the practice of appointing tenants to the Boards of Commissioners of Local Housing Authorities, as outlined in its Circular RHM 7401.1, dated 7/14/70. The declaration of the Congress in Section 211 complements the previously expressed policy of the Department.

   c. All Local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners.

APPENDIX C

STATE OF INDIANA

INDIANAPOLIS

OFFICES OF ATTORNEY GENERAL
THEODORE L. SENDAK, ATTORNEY GENERAL
219 STATE HOUSE
46204

November 17, 1969

Mr. D. R. Schaefer
Assistant Attorney General
c/o Community Affairs
1179 Main Street
Hartford, Connecticut 06101

Dear Mr. Schaefer:

This office is in receipt of your request for information on the question of whether a tenant of a housing authority can serve as a Commissioner of that authority.

I have been unable to find any Indiana court decisions or Attorney General Opinions, whether official or unofficial, on this subject.

The reason for lack of such decisions might be the fact that Sec. 10 of the 1937 Indiana Housing Authority Act (which the compiler of the unofficial Burns' Indiana Statutes Annotated considers comparative legislation to Connecticut's general statutes of 1958, Sec. 8-38 et seq.) appears to specifically exclude Commissioners as tenants. A copy of that Statute, Burns' Sec. 48-8110, is enclosed.

Please advise if you wish further information.

Sincerely,

John T. Carmody
Deputy Attorney General

JTC/ssc

enc.

48-8110. Rentals and tenant selection.—In the operation or management of housing projects a housing authority shall at all times observe

the following duties with respect to rentals and tenant selection: (a) It shall not accept any person as a tenant in any dwelling in a housing project if the persons who would occupy the dwelling have an aggregate annual income which equals or exceeds the amount which the authority determines, which determination shall be conclusive, to be necessary in order to enable such persons to secure safe, sanitary and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living for themselves.

(b) It may rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons who lack the amount of income which it determines, pursuant to (a) of this section, to be necessary in order to obtain safe, sanitary and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living.

(c) It may rent or lease to a tenant a dwelling consisting of the number of rooms, but no greater number which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

The housing authority shall promulgate rules specifically indicating the manner in which it shall exercise its powers and perform its duties under this section, which rules shall be applicable equally to all tenants and shall be posted for public inspection in a conspicuous place in the office of the housing authority.

No employee, officer or member of a housing authority except the resident manager and one [1] maintenance employee for each one hundred and fifty [150] families or major fraction thereof, and no holder of any public office or appointment shall be eligible as a tenant. Nor shall employees of the United States, the state of Indiana or any political subdivision or agency thereof constitute collectively more than ten per cent [10%] of the tenants in any housing project: Provided, however, That service in the armed forces of the United States, receipt of public assistant [assistance] from the county welfare department, receipt of direct relief, or service under work relief projects shall not be construed as employment, office or appointment in applying this paragraph.

Nothing contained in this or the preceding section shall be construed as limiting the power of an authority to vest in any obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof or acquire title thereto through foreclosure proceedings, free from all the restrictions imposed by this or the preceding section. [Acts 1937, ch. 207, § 10, p. 1034; 1947, ch. 374, § 5, p. 1494; 1961, ch. 174, § 1, p. 388.]

Compiler's Note. Bracketed word "assistance" inserted by compiler.

Title of Amendatory Act. The title of Acts 1961, ch. 174, reads: "An act to amend the law which created public bodies corporate and politic to be known as housing authorities as such law relates to those eligible to be tenants in housing projects, being Acts 1937, c. 207 as last amended by Acts 1947, c. 374."

Amendments. The 1947 amendment, in subsection (a) substituted commas for parentheses beginning with the word "which" and ending with "conclusive." In subsection (b) it substituted commas for parentheses beginning with the word "pursuant" and ending with "section." In subsection (c) it made like substitution, beginning with the word "but" and ending with "number." The fourth and fifth paragraphs were added.

The 1961 amendment in the first and second sentences of the third paragraph of subsection (c) substituted "holder of any public office or appointment shall be eligible as a tenant. Nor shall employees of the United States, the state of Indiana or any political subdivision or agency thereof constitute collectively more than ten per cent of the tenants in any housing project:" for "employee of any local, state or federal govern-

APPENDIX D



STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY, N. Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

Telephone: 474-6662

November 13, 1969

Hon. D. R. Schaefer
Assistant Attorney General
c/o Community Affairs
1179 Main Street
Hartford, Connecticut 06101

Dear Sir:

This is in response to your letter of November 6, 1969, wherein you request copies of any opinions issued by this office on the question as to whether a tenant of a housing authority can serve as a Commissioner of that authority. I enclose herewith a copy of 1967 Op. Atty. Gen. (Inf.) May 18, 95.

Since that opinion, Public Housing Law § 30 was amended by L. 1969, c. 488, eff. May 10, 1969 by adding a new subdivision 5 to § 30 which reads as follows:

> "5. Not more than one member of an authority may be a tenant thereof at any one time. Any such appointment shall comply with the provisions of subdivision two of this section. Acceptance or retention of such appointment shall not be deemed incompatible with, or a forfeiture of such tenancy, provided however, that such member shall cease to serve as such upon termination of his tenancy for any reason, or upon his becoming subject to removal from occupancy due to the operation of section one hundred fifty-six of this chapter; and provided that any compensation paid to such member for his services to an authority shall not affect his eligibility for membership on such

authority or for continued occupancy, but may be used in the determination of his rent." (Emphasis supplied)

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By:

CARL J. RUSKOWSKI
Assistant Attorney General

Enc.

PUBLIC HOUSING LAW §§ 3(2)(14)(20), 36; GENERAL MUNICIPAL LAW §§ 801, 802(1-h).

A member appointed to a municipal housing authority who is a tenant in a project under a lease entered into with the authority prior to his appointment, with full disclosure by him of such lease given to the authority before his appointment, may continue as a member of the authority and a tenant in the project during the duration of the lease, provided there be no renewal of such lease.

May 18, 1967

Stephen R. J. Roach, Jr., Esq.
Attorney for Tuckahoe Housing Authority
2074 Crompond Road
Yorktown Heights, New York 10598

Dear Sir:

In your letter of May 9, 1967 you asked the following question:

> "May a tenant residing in the Project of the Tuckahoe Housing Authority, who holds such tenancy under a written lease be, at the same time he is a tenant, a member of the Authority; and may he continue to sit as a member of the Authority while at the same time continuing to be a resident in the Project?"

I understand that the member of the Authority was a tenant under written lease in the project prior to his appointment.

Public Housing Law § 36 provides:

> "No member or employee of an authority shall acquire any interest direct or indirect in a project or in any property then or thereafter included or planned to be included in a project, nor retain any interest direct or indirect in any property acquired subsequently to his appointment or employment which is later included or to his knowledge planned to be included in a project." (Emphasis supplied.)

The above section also provides that if such interest in the property or project was acquired prior to appointment of such member or employee, he shall disclose such interest

(over)

d date of acquisition in writing to the authority also prior his appointment. I assume such disclosure was made in this stance.

Under Public Housing Law § 3(14), the term "project" cludes "lands, buildings and improvements * * * to provide elling accommodations for persons of low income", and under 3(20) the terms "real property" or "property" include "lands d improvements, * * * and any and all easements, franchises d hereditaments, corporeal or incorporeal, and every estate, terest and right therein". (Emphasis supplied.) In Kayser rporation v. Fosterport Realty Corporation, 1 M. 2d 489 (Sup. ., Bronx Co., 1947), affd. 272 App. Div. 878, the Court stated substance that a lease transfers an interest in a designated rtion of land, whereby the landlord yields up the exclusive ssession of such designated portion of land for a specified rm for all purposes not prohibited by express agreement, while Goulang Realty Company, Inc. v. Dyer, 138 N. Y. S. 2d 817 un. Ct. of the City of New York, Borough of Bronx, 2d Dist., 954), affd. 138 N. Y. S. 2d 826 (Sup. Ct., App. T., 1st Dept.), e Court quoted with favor Mr. Justice Brieach in Russbaum v. rstaff Realty Co., Inc. (Sup. Ct., Bronx Co., 1950), 197 Misc. 27, 528, 96 N. Y. S. 2d 161, 163, who stated:

> "A lease is a contract between a landlord and a tenant for the occupation of real property and contains clauses for the protection of both and terminates upon a definite day agreed upon by all parties."

It appears under Public Housing Law § 36 that a member f a municipal housing authority would be disqualified from mbership on such authority if he acquired or retained a lease r tenancy in the project consummated after his appointment. e section would require a member, prior to his appointment, to isclose to the authority the existence of such lease which had en entered into prior thereto, but is silent as to his disualification after such disclosure followed by his appointment.

General Municipal Law § 801 prohibits interests in ertain contracts with municipalities and certain public agencies by their employees and officers, but does not cover under its rovisions a municipal housing authority which, under Public ousing Law § 3(2), is "a public corporation which is a corporate overnmental agency". General Municipal Law § 802(1-h) makes an xception in its conflicts of interest prohibitions in a case here a contract with such municipality or public agency, in

Which an officer or employee has an interest, was entered into prior to the time he was elected or appointed, but in no event authorizes a renewal of such contract.

My predecessor, in 1951 Atty. Gen. 109, stated as follows:

> "Although various statutes proscribe a municipal officer's having a personal interest in a contract with his municipality, the courts have stated that these statutory provisions are merely declaratory of the common law rule. Matter of Clarke v. Town of Russia, 283 N. Y. 272, 274; Matter of Black, 234 App. Div. 7). * * * I feel that, in consonance with the spirit of the common law, a member of a housing authority should be held to the same standard of conduct as that of a municipal officer."

From the foregoing, I conclude that a member appointed to a municipal housing authority who is a tenant in a project under a lease entered into with the authority prior to his appointment, with full disclosure by him of such lease given to the authority before his appointment, may continue as a member of the authority and a tenant during the duration of the lease, provided there be no renewal of such lease. However, public policy would dictate that the appointment of a tenant in a project to membership on a municipal housing authority having jurisdiction over such project should be avoided.

The Attorney General is authorized to render formal and official opinions to officers and departments of the State government only. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By

CARL J. RUSKOWSKI
Assistant Attorney General

CJR:AMM

and date of acquisition in writing to the authority also prior to his appointment. I assume such disclosure was made in this instance.

Under Public Housing Law § 3(14), the term "project" includes "lands, buildings and improvements * * * to provide dwelling accommodations for persons of low income", and under § 3(20) the terms "real property" or "property" include "lands and improvements, * * * and any and all easements, franchises and hereditaments, corporeal or incorporeal, and every estate, interest and right therein". (Emphasis supplied.) In Kaypar Corporation v. Fosterport Realty Corporation, 1 M. 2d 469 (Sup. Ct., Bronx Co., 1947), affd. 272 App. Div. 878, the Court stated in substance that a lease transfers an interest in a designated portion of land, whereby the landlord yields up the exclusive possession of such designated portion of land for a specified term for all purposes not prohibited by express agreement, while in Gaulang Realty Company, Inc. v. Dyer, 138 N. Y. S. 2d 817 (Mun. Ct. of the City of New York, Borough of Bronx, 2d Dist., 1954), affd. 138 N. Y. S. 2d 826 (Sup. Ct., App. T., 1st Dept.), the Court quoted with favor Mr. Justice Brisach in Nussbaum v. Garstaff Realty Co., Inc. (Sup. Ct., Bronx Co., 1950), 197 Misc. 527, 528, 96 N. Y. S. 2d 161, 163, who stated:

> "A lease is a contract between a landlord and a tenant for the occupation of real property and contains clauses for the protection of both and terminates upon a definite day agreed upon by all parties."

It appears under Public Housing Law § 36 that a member of a municipal housing authority would be disqualified from membership on such authority if he acquired or retained a lease for tenancy in the project consummated after his appointment. The section would require a member, prior to his appointment, to disclose to the authority the existence of such lease which had been entered into prior thereto, but is silent as to his disqualification after such disclosure followed by his appointment.

General Municipal Law § 801 prohibits interests in certain contracts with municipalities and certain public agencies by their employees and officers, but does not cover under its provisions a municipal housing authority which, under Public Housing Law § 3(2), is "a public corporation which is a corporate governmental agency". General Municipal Law § 802(1-h) makes an exception in its conflicts of interest prohibitions in a case where a contract with such municipality or public agency, in

which an officer or employee has an interest, was entered into prior to the time he was elected or appointed, but in no event authorizes a renewal of such contract.

My predecessor, in 1951 Atty. Gen. 109, stated as follows:

> "Although various statutes proscribe a municipal officer's having a personal interest in a contract with his municipality, the courts have stated that these statutory provisions are merely declaratory of the common law rule. Matter of Clarke v. Town of Russia, 283 N. Y. 272, 274; Matter of Black, 234 App. Div. 7). * * * I feel that, in consonance with the spirit of the common law, a member of a housing authority should be held to the same standard of conduct as that of a municipal officer."

From the foregoing, I conclude that a member appointed to a municipal housing authority who is a tenant in a project under a lease entered into with the authority prior to his appointment, with full disclosure by him of such lease given to the authority before his appointment, may continue as a member of the authority and a tenant during the duration of the lease, provided there be no renewal of such lease. However, public policy would dictate that the appointment of a tenant in a project to membership on a municipal housing authority having jurisdiction over such project should be avoided.

The Attorney General is authorized to render formal and official opinions to officers and departments of the State government only. Necessarily, therefore, the foregoing is not to be considered a formal opinion of the Attorney General, but is an informal and unofficial expression of view given with the desire to be helpful to you.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By

CARL J. RUSKOWSKI
Assistant Attorney General

CJR:ANM

APPENDIX E

APPROVED IN CONFERENCE

N. D.

19 December 1968

SUBJECT: Housing Authorities; Tenant in Housing Authority Disqualified to be a Commissioner Thereof.

Mr. Daniel K. Edwards
Attorney at Law
111 Corcoran Street
Durham, North Carolina 27702

Dear Mr. Edwards:

In your letter of December 13, 1968, you request an opinion as to whether a tenant in a Housing Authority would be disqualified to hold office as a Commissioner of the Authority. You state that the tenants lease the dwelling units from the Authority and enter into a written lease for a term of years specifying rents and other obligations of the landlord and tenant.

We are of the opinion that GS 157-7 and GS 14-234 would prohibit a tenant serving as a Commissioner of the Housing Authority.

With kind regards and best wishes for the Holiday Season, I am

Yours very truly,

T. W. BRUTON
Attorney General

James F. Bullock
Deputy Attorney General

JFB:fg